

ALASKA NATIVE ALLOTMENT SUBDIVISION ACT; ALASKA  
LAND TRANSFER FACILITIES ACT; OJITO WILDERNESS  
ACT; AND INVENTORY AND MANAGEMENT PROGRAM  
FOR PUBLIC DOMAIN LANDS

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS  
OF THE  
COMMITTEE ON  
ENERGY AND NATURAL RESOURCES  
UNITED STATES SENATE  
ONE HUNDRED EIGHTH CONGRESS  
SECOND SESSION  
ON  
**S. 1421                      S. 1649**  
**S. 1466                      S. 1910**

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FEBRUARY 12, 2004



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**THURSDAY, FEBRUARY 12, 2004**

U.S. SENATE,  
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS,  
COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 2:35 p.m., in room SD-366, Dirksen Senate Office Building, Hon. Lisa Murkowski presiding.

**OPENING STATEMENT OF HON. RON WYDEN, U.S. SENATOR  
FROM OREGON**

Senator WYDEN. The Subcommittee on Public Lands and Forests will come to order.

First, as a result of the graciousness of Senator Murkowski—and I very much appreciate her indulgence on this—we are going to break with our practice. As the ranking minority member, I traditionally follow Senator Craig, the chair of the subcommittee, but as a result of the graciousness of Senator Murkowski and the graciousness of Senator Craig, I am going to be beginning the hearing and we anticipate our colleagues coming very shortly.

Today, we are going to be looking at a number of bills, and one of special importance to the people of Oregon is S. 1910. This is a piece of legislation that is supported by the administration. The Department of Agriculture will be testifying to that effect. It would establish a forest health research center in Prineville, Oregon. This is a center that would help reduce wildfire risks throughout the West and provide a much-needed boost for the local economy.

I am going to submit for the record, with unanimous consent, the testimony and views of Judge Scott Cooper, one of the central Oregon Crook County Commissioners, as well as the Prineville Crook County Chamber of Commerce.

This is legislation that I worked to make part of the Healthy Forests Restoration Act and it was originally included, but at the last minute, it was dropped from the legislation, although a companion research facility meant to address eastern hardwood forests was retained.

The point of this legislation is to ensure that there is a facility to carry out a major requirement of the Healthy Forests Restoration Act to inventory and assess forest stands on Federal forest land and with the consent of owners on private forest land. The objectives of the assessment are to evaluate forest health conditions now and in the future and to consider the ecological impacts of insect, disease, invasive species, fire- and weather-related events. The center will work to make sure data is as accurate as possible in order to improve forest management.

I am very pleased that the chair of the subcommittee has returned. Senator Murkowski has joined us and as a result of Senator Murkowski's very gracious staff, I have been allowed to actually open this hearing.

Let me again express my thanks to you, Madam Chair, and your staff for breaking with precedent. Over the years we have always worked in a bipartisan kind of fashion, but you have sort of set a new standard today by letting me begin. I am very appreciative. I will return to the gavel to you.

**STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR  
FROM ALASKA**

Senator MURKOWSKI. Thank you Senator Wyden. I am glad that had an opportunity to put some of your comments on the record. So most appreciated.

Well, good afternoon.

The subcommittee chairman of the Public Lands and Forests Subcommittee, Senator Craig, is unable to join us this afternoon. He has asked that I chair today's hearing, which I am pleased to do.

We are expecting Senator Bingaman to join us this afternoon. Senator Bingaman I understand and certainly myself have some opening statements. I understand that you, Senator Stevens, are on a bit of a tight schedule though and we would like to accommodate that. We will take your testimony first and if you need to leave after that, before we convene our panelists, that is fine. We appreciate you joining us, and if you would like to begin with your comments on the legislation before us this afternoon.

**STATEMENT OF HON. TED STEVENS, U.S. SENATOR  
FROM ALASKA**

Senator STEVENS. Well, thank you very much, Madam Chairman. I am pleased to be here today to voice my support for your bill, S. 1466, the Alaska Land Acceleration Act.

In 1958, Congress enacted the Alaska Statehood Act. This act granted the State over 103 million acres of land, an area roughly equal in size to the State of California. These lands were to serve as the basis for Alaska's economic and cultural development. 45 years later, our State is still waiting for the transfer of 15 million acres and for title to over 60 million additional acres. Combined, the land we have not yet received is equal to the acreage of the State of New Mexico.

In 1971, Congress also passed the Alaska Native Claims Settlement Act, which we call ANCSA, which granted 44 million acres to Alaska Natives. 32 years later, they too are still awaiting the

transfer of over 10 million acres and title to millions of acres more. In addition, thousands of Alaska Native allottees are awaiting final approval of their native allotments.

The pace of the land conveyance program has had a chilling effect on the development of our State, as you know.

One of the concerns prior to the passage of the Statehood Act was whether or not Alaska would be able to support its government and its communities across the great expanse of our State. To address this concern, Congress included a land grant in the act to provide the State with an economic base and it actually accelerated, it was thought, the availability of land to Alaska. Other States got sections 16 and 36 out of every township. We had the right to select in contiguous blocks up to 103.5 million acres.

Now, because the conveyance process is not yet completed, the promise of providing that economic base has not been fulfilled. Not only has the slow pace of land conveyance taken an economic toll on the State, it has taken a personal one as well.

I remember well a constituent of ours, Tegliana Melilak, who wrote to me in the early 1980's asking for my assistance in her native allotment case. She had submitted an application for a native allotment to BIA, which back then handled native allotments. Tegliana was sick and she wanted to make sure that the allotment was conveyed to her before she died. She wanted to have a part of her heritage to pass along to her children.

I agreed to look into the situation and I requested that BIA provide me with an estimate of how long it would take to process that claim. BIA responded very matter of factly that they should be able to process Tegliana's application in about 70 years. 70 years. Imagine how difficult it was to tell her that the best the Federal Government could do was to promise that some day they would get around to conveying the land to her children or her grandchildren.

Obviously, I could not and did not accept that as the only option, and that is why for years I have asked Congress to increase the funding for land conveyance. The program has been funded rather substantially.

But it became increasingly clear that simply increasing funding for the program was not enough. Changes in the law will also have to be made to ensure that the conveyance program is completed in my lifetime. This bill will do that, I hope. It will ensure that the timely settlement of Alaska's claims by streamlining the process by which the land is conveyed. It accelerates conveyances to the State of Alaska and the native corporations, finalizes pending native allotments, and completes the University of Alaska's remaining land entitlement.

The people of our State have waited a long time, far too long, for the Federal Government to transfer ownership of land that rightly belongs to the State of Alaska and to Alaskans. Resolving these claims by 2009 is vitally important for the future of Alaska because it will enable Alaskans to efficiently manage their lands and allow our citizens the opportunity for a meaningful economic development.

This date is also important because it is the 50th anniversary of our Statehood. Surely Congress and the Federal Government will

be able to see to it that they can finalize a land grant enacted to give us an economic base almost 50 years ago.

I want to thank you, Senator Murkowski, for taking the initiative to find a way to see to it that the promise made to our people in Alaska will be finally fulfilled, and I would urge all Senators to favorably report this bill out of this committee and help facilitate its passage.

We went to great lengths to set aside these lands. We had a long battle for 7 years. The lands the Federal Government wanted to reserve, ANILCA, the law that sets aside over 100 million acres of our land that cannot be available either to the State or the natives. After that was done, I thought we would get our lands. But it simply has not happened.

I do not want to see future generations of Alaskans suffer as Teghiana did. A few years after she contacted my office, we were successful in having her native allotment conveyed to her. We did get a bill passed to do that. Unfortunately, she had passed away and was not able to see her dream of passing land over to her children fulfilled.

I think Alaskans have the right to this land and they have the right to pass their heritage on to succeeding generations, and I ask you to do everything you can—and I will join you—to assure that the Alaska land conveyance will be a dream fulfilled and not a dream continually deferred.

Thank you very much.

Senator MURKOWSKI. Thank you, Senator Stevens. I certainly appreciate your testimony and all that you have done over the years to get us to the point where we are. We recognize that we have got a long way to go, but we do know that we have made progress, and for that, we thank you.

I will go ahead and make my opening statement today. I'd like to give those that are here a little bit of a background on what the committee has before it today. We will be hearing testimony on four bills: S. 1421, which is the Alaska Native Allotment Subdivision Act; S. 1466, the Alaska Land Transfer Facilitation Act; S. 1649, the Ojito Wilderness Act in New Mexico; and S. 1910, a bill to direct the Secretary of Agriculture to carry out an inventory and management program for forests on public domain.

I would like to welcome each of the witnesses who have traveled here to Washington, D.C. I know that coming to Washington this time of year is not exactly the choice trip to make. I suppose the good news is you are here this week and not last week so we can actually have this hearing.

I would like to welcome back to our committee, BLM Director Kathleen Clarke. Welcome to you.

From Alaska, I would like to recognize deputy commissioner Marty Rutherford with the Alaska Department of Natural Resources in Anchorage; Mr. Edward Thomas, president of the Central Council of the Tlingit and Haida Indian Tribes of Alaska in Juneau; Mr. Jim Mery, senior vice president for Lands and Natural Resources with Doyon, Limited in Fairbanks; Mr. Russell Heath, executive director of the Southeast Alaska Conservation Council in Juneau; and Mr. Jack Hession, Alaska Representative for the Sierra Club.



I know that Senator Bingaman had hoped to be here to introduce those of his constituents who are here from New Mexico. Since he is not here, I would like to recognize Governor Peter Pino, the Pueblo of Zia in New Mexico; and Mr. Martin Heinrich of Albuquerque, New Mexico.

In addition to Kathleen Clarke, we have Henri Bisson, the Alaska State Director of the BLM, and Linda Rundell, the New Mexico State Director of the BLM. We welcome you all.

It gives me great satisfaction that on today's agenda we have two very important Alaska bills. These bills address two different but very pressing needs in Alaska, as Senator Stevens articulated very well. We held a subcommittee field hearing in Anchorage last August where we heard the first round of testimony on this legislation. For S. 1466, the Alaska Land Transfer Facilitation Act, this field hearing really did give us a better understanding of a relatively complicated bill that has led to much discussion across the State and a rework of the original bill language. I think that there has been good collaboration and considerable progress on improving this bill. I know that a lot of people have worked very, very hard to achieve some of the compromise and really the reworked legislation. But there is more to be done and I do hope that we will continue in this cooperative spirit.

Under the Statehood Act, Alaska was promised 104 million acres of land and to date has received final title to only 42 million acres. Additionally, in 1971, the native corporations were promised 42 million acres of land and have received title to only a third of that land, just 15 million acres. In 1906, Congress passed the Alaska Native Allotment Act that provided natives the opportunity to acquire an allotment of up to 160 acres and yet unprocessed applications still number in the thousands. I think it is about 2,500.

It has been 45 years since Alaska's Statehood, 33 years since the passage of ANCSA and the repeal of the Allotment Act, and yet under current law procedures, we are at least 20 years from seeing these conveyances complete.

Now, I circled that 20-year figure because I have heard conflicting figures. At one testimony in Anchorage, I heard 85 years. In Ms. Rutherford's written comments before the hearing today, I see a reference to 300 years before the State lands can be transferred. Any way you cut it, it is far too long, whether it is 20 years, 85 or, God forbid, 300.

It is past time that Congress take action to streamline the process and build some flexibility into administrative authority so we can get this job done before the end of the decade. This bill would streamline administrative processes that will expedite transfer of millions of acres of land to Alaska Natives, the State of Alaska, and to native corporations, and will bring finality to this decades-long conveyance process.

The Federal Government has management jurisdiction of over 63 percent of the State. It is long past time to transfer these public lands from Federal Government control to State and private ownership.

Now, the second bill I would like to speak to is S. 1421, the Alaska Native Allotment Subdivision Act. This act is the only answer

to resolving the question of whether native landholders have the authority to subdivide their own property.

Individual Alaska Native landowners cannot subdivide their land to transfer it either by gift or sale. There is no current authority that allows them to dedicate rights-of-way across their land for public access or for utility purposes. The lack of this explicit statutory authority calls into question the legal validity of lands that have been subdivided and lands that likely could be subdivided in the future.

This legislation will provide the necessary authorization to the Department of the Interior and native landowners to dedicate their land for public purposes as they see fit. This legislation is non-controversial and is beneficial to all affected parties and to the general public. The State of Alaska and local governments have urged such legislation, and the Department of the Interior is also supportive. I hope that we will be able to move this bill quickly through the committee.

Senator Bingaman, you are right on time. I would now like to give you an opportunity to make any opening remarks you have. I have made a general introduction, but if you would like to recognize those who have come all the way from New Mexico, that would be appropriate.

**STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR  
FROM NEW MEXICO**

Senator BINGAMAN. Well, thank you very much, Madam Chairwoman.

I am very pleased that you called this hearing, and I am here particularly because of S. 1649, which is legislation that I introduced to designate 11,000 acres of land administered by the BLM as wilderness in our State. This is the first BLM wilderness that we would have designated in over 15 years. Although the issue of wilderness is usually contentious, at least before I got to this hearing today, I had thought this was a largely noncontroversial proposal. It has the strong support of the State of New Mexico, the Governor, the county of Sandoval, the county of Bernalillo. Senator Domenici is a co-sponsor. Congressman Udall has introduced a companion measure in the House of Representatives.

This Ojito Wilderness is currently a designated wilderness study area, and the proposal follows recommendations made by the BLM and by former President Bush when he was in office in 1991. The proposed wilderness is adjacent to the Zia Pueblo's lands, and Governor Pino is here to represent the Zia's perspective on this. They have been very supportive of trying to move ahead with this, which I very much appreciate.

The other purpose of S. 1649 is to authorize the sale of certain BLM lands to the Pueblo. The lands that would be conveyed to the Pueblo have high religious and cultural significance, and with assurances in the bill that the Pueblo will allow continued public use of those lands, it had been my belief—and it still is—that this conveyance would be noncontroversial as well.

I was surprised to see the administration's testimony that we have just received that the Interior Department apparently wants to use this bill to develop an entire new policy on tribal trust

issues. Obviously, that is of concern to me. I am not averse to re-looking at tribal trust issues, but I do think that this particular bill is one which has strong support and I hope very much we can move ahead with it.

Two of the witnesses that are testifying this afternoon are from New Mexico. I mentioned Governor Peter Pino from Zia Pueblo. Also Martin Heinrich, who is a member of the Albuquerque City Council, is here, and we appreciate his presence and support very much.

Madam Chairwoman, I am unfortunately in a hearing with the Secretary of the Treasury right down the hall and I need to try to return there to ask him a few questions. I will try to get back this afternoon. But I very much appreciate you having the hearing, and to the extent I cannot ask my questions, I will submit them. Thank you.

Senator MURKOWSKI. You are very welcome. And, Senator, right now we have the New Mexico panel that will come up after Kathleen Clarke has spoken. If it would help you, we could always send somebody down to let you know when they will be coming up.

Senator BINGAMAN. I wish you would do that, and by then I hope I will be free to come back. Thank you.

Senator MURKOWSKI. Very good. We will give you notice then. Thank you.

I would now like to invite our first witness. We will allow each witness 5 minutes to summarize their testimony. Your written and oral statements will be made a part of the official record of the hearing and any supplemental material will need to be submitted no later than 10 calendar days from today.

So, Director Clarke, if you would lead us off this afternoon. Thank you and welcome to the committee.

**STATEMENT OF KATHLEEN CLARKE, DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY HENRI BISSON, ALASKA STATE DIRECTOR, BLM; AND LINDA RUNDELL, NEW MEXICO STATE DIRECTOR, BLM**

Ms. CLARKE. I really appreciate this opportunity, Senator Murkowski. This is my first visit back to this committee room since I was confirmed, so it is a pleasure to join you again. I appreciate the fact it is to speak to some very important legislation and welcome this opportunity.

I am here to present the views of the Department of the Interior on S. 1466, the Alaska Land Transfer Acceleration Act; S. 1421, the Alaska Native Allotment Subdivision Act; and S. 1649, the Ojito Wilderness Act.

I am grateful to be accompanied by two State Directors, Henri Bisson from Alaska and Linda Rundell from New Mexico, who have proven to be great leaders in their new assignments.

In the interest of time, I will summarize my written remarks that have been submitted for the record.

The Department supports the intent of the two Alaska measures and we have done so since the August field hearing on the bills in Anchorage. We would like to continue to work with the committee

to make certain that amendments to clarify and strengthen the bills are considered and look forward to that opportunity.

The Bureau of Land Management in Alaska manages the largest land conveyance program in the United States, one that requires the survey and conveyance of nearly 150 million acres of Alaska's 365 million acre land base. The Alaska land transfer laws include the Native Allotment Act of 1906; the Alaska Native Claims Settlement Act, known as ANCSA; and the Alaska Statehood Act. The BLM in Alaska has worked diligently for the last 30 years to implement these interconnected and very complex laws. However, the pace of land conveyances has been slow and I would like to explain some of the reasons.

The three major land transfer laws have been amended, superseded, reinterpreted by the judiciary many times, requiring BLM to reassess, review, and re-sort land title claims to make certain that its actions are appropriate to new determinations made by the court. The BLM's adjudication and survey of land title claims is complicated, both operationally due to remote location and extreme weather in Alaska and administratively due to complex case law and process required for transferring lands from Federal ownership to other parties.

Alaska Natives, State officials, and the Alaska delegation have all expressed concern about the pace of these land transfers, and Henri and I have had numerous discussions about the problems and the pace of this program.

The Department shares an interest in completing the Alaska land transfers in an expeditious manner. In fact, the BLM has extensively analyzed the land transfer program to identify ways to streamline the process and expedite conveyances.

In 1999, working in partnership with its customers and stakeholders, the BLM developed a plan that would result in the completion of land transfer work by 2020. That still seems like a long way out.

Responding to the 2003 congressional directive and in an effort to further expedite conveyances, BLM officials met with staff from the Alaska congressional delegation, native entities, environmental groups, industry, the State, and other Federal agencies to discuss ideas to get feedback on improvement to the land transfer process.

S. 1466 was introduced as a legislative solution to resolve many of the challenges that we face. This bill will expedite adjudication and conveyance of Alaska land claims and the Department of the Interior supports this bill.

S. 1421, meanwhile, would authorize the Alaska Native owners of restricted allotments, subject to the approval of the Secretary, to subdivide their lands in accordance with State and local laws.

Enactment of S. 1421 would remove the obstacles to pending lot sales and resales in subdivisions and the Department of the Interior certainly supports the intent of this bill as well.

I regret that Senator Bingaman had to leave, but I will go ahead and enter my brief comments relative to the Ojito bill.

The Department supports the designation of the entire 10,794 acres of Ojito WSA as wilderness. We would like the opportunity to work with Senators Bingaman and Domenici, as well as this

committee's staff, to address both substantive and technical issues within the wilderness section.

While the administration is very sensitive to the goals of the Pueblo of Zia to consolidate its landholdings and to protect sites of religious and cultural significance, there are several issues that have arisen relative to the transfer of BLM-managed lands into trust status for the Pueblo of Zia, and these remain unresolved. We certainly are willing to work with the Senators and the committee to see how we might address those issues.

To be a little bit more specific, the Secretary's trust responsibility that Senator Bingaman alluded to is a responsibility to manage the land should be addressed with clarity and precision. Much of the controversy that we have faced in recent years at the Department of the Interior regarding the Secretary's trust responsibility stems from the failure to have clear guidance about the roles and responsibilities of trustee and beneficiary. Congress should decide these issues, not the courts.

Accordingly, we recommend that the committee amend the bill to set forth the specific trust duties it wishes the United States to assume with respect to the acquisition of these lands.

While the legislation as introduced does not reference the acres to be transferred, it is our understanding that the Pueblo seeks to acquire approximately 11,500 acres of public land. We are concerned that several of the bill's provisions may be insufficient to protect the public interest. Although section 5(a) of the bill makes the transfer subject to valid existing rights, and section 5(f) addresses the rights-of-way, the effect of these provisions to ensure continued access may be limited.

The BLM is concerned about preserving access to and on six roads crossing current BLM-managed lands. We believe the public interest would be better served by amending the legislation to grant the BLM a permanent easement for the corridors of land underlying these roads.

But as I stated, we would look forward to working with the sponsors of the legislation and the committee to address these concerns and to explore ways that we can resolve them.

Finally, on behalf of the administration, I have submitted for the record a copy of Forest Service testimony on S. 1910. The Forest Service has asked that if there are questions related to this bill, that they be submitted in writing.

[The prepared statement of the U.S. Forest Service follows:]

#### STATEMENT OF THE FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. Chairman and Members of the Committee, thank you for the opportunity to present the Department of Agriculture's views on S. 1910, a bill to direct the Secretary of Agriculture to carry out an inventory and management program for forests derived from public domain land with the purpose of providing long-term solutions to forest health issues. The Department of Agriculture supports S. 1910.

On December 3, 2003, President Bush signed into law the Healthy Forests Restoration Act (HFRA) of 2003 to reduce the threat of destructive wildfires while upholding environmental standards and encouraging early public input during review and planning processes. The legislation is based on sound science and helps further the President's Healthy Forests Initiative pledge to care for America's forests and rangelands, reduce the risk of catastrophic fire to communities, help save the lives of firefighters and citizens, and protect threatened and endangered species. The HFRA also authorizes a forest stand inventory and monitoring program to improve detection for and response to environmental threats on National Forest lands other

than those NFS lands reserved from the public domain and private lands with the owners' consent.

S. 1910, as introduced, would complement the Healthy Forest Restoration Act by authorizing an inventory and management program on National Forest lands reserved from the public domain with an emphasis on forest stands in the Western United States. The bill would amend the Cooperative Forestry Assistance Act of 1978 to direct the Secretary of Agriculture to use geospatial and information management technologies to inventory, monitor, and identify National Forest System and private (with landowner consent) forest stands through the application of remote sensing technology of the National Aeronautics and Space Administration (NASA) and the United States Geological Survey; emerging geospatial capabilities in research activities; field verification to validate techniques; and integrating the results into pilot operational systems.

Under the provisions of the S. 1910, the Secretary would address: (1) environmental threats (including insect, disease, invasive species, fire, acid deposition, and weather-related risks and other episodic events); (2) forest degradation, and preventive management practices; (3) quantification of carbon uptake rates; and (4) characterization of vegetation types, density, fire regimes, and post-fire effects. The bill would require the Secretary to develop a comprehensive early warning system for potential catastrophic environmental forest threats.

The Secretary would also designate and maintain a facility in the Ochoco National Forest headquarters in Prineville, Oregon, to address these issues.

S. 1910 is important because it recognizes the critical need to help identify priorities and monitor progress as implementation of the National Fire Plan, the President's Healthy Forests Initiative and the Healthy Forest Restoration Act proceeds. Current condition class and fire regime maps require updating, and by using remote sensing the Forest Service can track changes in condition class over time as vegetation changes and projects are implemented on the ground. Opportunities exist to work with NASA, other agencies and the commercial sector to use state-of-the-art technologies in earth observations, from aircraft and spacecraft, and output from predictive models to improve the timeliness and accuracy of forest and rangeland inventories, monitor changes over time, and detect insect and disease infestations.

Several existing Forest Service programs are well positioned to help address the issues identified in the proposed legislation.

The Forest Service participates in national and international monitoring efforts for disturbances, forest health, and sustainability. Forest Health Monitoring (FHM) is a national program designed to determine the status, changes, and trends in indicators of forest condition on an annual basis. The FHM program uses data from ground plots and surveys, aerial surveys, and other biotic and abiotic data sources and develops analytical approaches to address forest health issues that affect the sustainability of forest ecosystems.

Forest Inventory and Analysis (FIA) is the Nation's forest census. The Forest Inventory and Analysis program collects data and reports annually on strategic-scale status and trends in the Nation's forests, including data on forest threats, degradation, and vegetation characterization. These reports cover status and trends in forest area and location; species, size, and health of trees; total tree growth, mortality, and removals by harvest; wood production and utilization rates by various products; and forest land ownership. The FIA program includes information relating to tree crown condition, lichen community composition, soils, ozone indicator plants, complete vegetative diversity, and coarse woody debris. In addition to strategic-scale analysis, National Forest land managers are highly interested in monitoring forests at the stand level. Active stand-level inventory programs are underway in several regions and could be applied in the forests of eastern Oregon.

A part of the President's Climate Change Science program involves interagency activity focused on integrating land-based and remote sensing inventories of carbon. This integration is done through partnerships at a variety of work units across the United States to cover all forest ecosystems. Forest Service Research and Development produces the national forest carbon inventory, through a multi-disciplinary national team, and includes quantification of carbon uptake. Other research activities develop carbon uptake estimates, carbon management systems, and management practices that protect and enhance forest health and productivity.

The agency also participates in developing detection, monitoring and mitigation systems for invasive species at various scales. The Forest Health Protection program of the Forest Service works closely with other Federal and State partners to detect and eradicate new invasions of invasive forest insects and pathogens, such as the Asian longhorned beetle, emerald ash borer, and sudden oak death, with the aim of reducing future impacts to urban and forest environments.

The proposed inventory program in S. 1910, especially integrated with the existing inventory and monitoring activities of the Forest Service and our state partners, would complement those programs in important ways. Specifically, increasing emphasis on stand-level monitoring will be of great interest to land managers and others involved in planning and implementing specific forest management projects on the ground. Linking these programs would support an effective early warning system that will enable land managers to isolate and treat a threat before the threat gets out of control; and prevent epidemics that could be environmentally and economically devastating to forests.

The Central Oregon location presents opportunities to pilot technologies due to the diverse forest types ranging from wet Douglas fir and mountain hemlock at the crest of the Cascades to dry juniper and sagebrush at the lower elevations, and the various forest types in-between. Forests across central Oregon are representative of most of the coniferous forests across the west. Insects and diseases present include Mountain Pine Beetle, spruce budworm, various root rots, and mistletoe. An Inventory Center on the Ochoco National Forest would provide an opportunity to integrate and synthesize important forest health and fuels information from Forest Service Research and Development, State and Private Forestry and National Forest Systems.

We would like to work with the committee on the exact location of the center within the Prineville community. We believe there may be sites other than the headquarters building which would serve the purposes of the bill.

We look forward to working with the committee and others interested in addressing healthy forest ecosystems. This concludes my testimony. I would be happy to answer any questions that you may have.

Ms. CLARKE. The administration and the Department of the Interior certainly look forward to working with this committee and with the sponsors and the interested parties in resolving issues that are outstanding.

If you have any questions, I would be happy to take them or pass them on to one of the State Directors who are here with me.

[The prepared statements of Ms. Clarke follow:]

PREPARED STATEMENT OF KATHLEEN BURTON CLARKE, DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, ON S. 1649

Thank you for the opportunity to testify on S. 1649, the Ojito Wilderness Act. This legislation would designate as wilderness the nearly 11,000 acre Ojito Wilderness Study Area (WSA). The bill also proposes to transfer certain public lands managed by the Bureau of Land Management (BLM) to trust status for the Pueblo of Zia (Pueblo) to become part of the Pueblo's Reservation. The administration supports the designation of the Ojito wilderness. However, we do have some significant concerns with the legislation as drafted. Several issues related to the proposed transfer of these BLM-managed lands into trust status remain unresolved and should be considered by Congress if it chooses to move forward with this legislation. We would like the opportunity to work with the Committee to resolve these issues.

#### OJITO WILDERNESS DESIGNATION

Forty miles northwest of Albuquerque, New Mexico, the Ojito WSA provides a respite from the city and offers a world of steep canyons, multi-colored rock formations and sculptured badlands. Rugged terrain and geologic anomalies attract an array of visitors. This area is home to a diverse community of plant and animal populations including mule deer, a small band of antelope, feline predators, and a wide range of raptors who nest in the steep cliffs.

The Ojito WSA contains extensive cultural resources. Both Archaic sites and several prehistoric sites are scattered throughout the WSA. More than 7,000 years ago Archaic hunters and gatherers inhabited the badlands of the Ojito. Archaeologists are just beginning to decipher the clues to their lives. Around 1200 A.D., the prehistoric Puebloan people moved to this area. Excavation of multi-roomed pueblos in this area has expanded our knowledge of these people and their agricultural lifestyle. Additionally, pre-19th century evidence of Spanish and Navajo use is apparent in areas of the WSA.

Scientific excavations of important dinosaur fossils can and have been conducted in ways that protect both the important specimens and the wilderness values of the area. The secrets of this ancient past are just beginning to be unearthed within the Ojito.

S. 1649 would designate the entire 10,794 acres of the WSA as wilderness. In a report issued in September 1991, the BLM's New Mexico State Office recommended the entire WSA for wilderness. That recommendation was subsequently sent to Congress by President George H.W. Bush in May of 1992.

We support this wilderness designation. We would like the opportunity to work with Senators Bingaman and Domenici, as well as Committee staff, to address both substantive and technical issues within the wilderness section. For example, the Department strongly recommends that the legislation be amended to clarify that the wilderness designation not constitute or be construed to constitute either an express or implied reservation of any water rights. Additionally, we would request changes to make the legislation consistent with other wilderness laws, such as the complete withdrawal of the land from the mining, and mineral leasing laws. Finally, we would like to complete work on a single map to be referenced in the legislation that accurately represents both the designated wilderness and the lands proposed to be transferred to the Pueblo as described below.

#### TRANSFER OF PUBLIC LAND TO PUEBLO OF ZIA

As with previous Zia Pueblo transfer legislation enacted in 1978 (P.L. 95-499) and 1986 (P.L. 99-600), S. 1649 arises from a desire by the Pueblo to protect religious and cultural sites in the area and to consolidate its land holdings. S. 1649 proposes to transfer certain lands currently managed by the BLM into trust status. The lands proposed to be transferred to trust status in S. 1649 contain numerous sites of religious and cultural significance to the Pueblo and other nearby Pueblos. The transfer would increase the ability of the Pueblo to protect the abundant religious, cultural, and archaeological resources in the area, but raises questions about the nature and extent of the Secretary's trust responsibilities.

Over the past several years, the Department has devoted a great deal of time to trust reform discussions. The nature of the trust relationship is now often the subject of litigation. Both the Executive Branch and the Judicial Branch are faced with the question of what exactly does Congress intend when it puts land into trust status. What specific duties are required of the Secretary, administering the trust on behalf of the United States, with respect to trust lands? Tribes and individual Indians frequently assert that the duty is the same as that required of a private trustee. Yet, under a private trust, the trustee and the beneficiary have a legal relationship that is defined by private trust default principles and a trust instrument that defines the scope of the trust responsibility. Congress, when it establishes a trust relationship, should provide the guideposts for defining what that relationship means.

Much of the current controversy over trust stems from the failure to have clear guidance as to the parameters, roles and responsibilities of the trustee and the beneficiary. As Trustee, the Secretary may face a variety of issues, including land use and zoning issues. Accordingly, the Secretary's trust responsibility to manage the land should be addressed with clarity and precision. Congress should decide these issues, not the courts. Therefore, we recommend the Committee set forth in the bill the specific trust duties it wishes the United States to assume with respect to the acquisition of these lands for the Pueblo. Alternatively, the Committee should require a trust instrument before any land is taken into trust. This trust instrument would ideally be contained in regulations drafted after consultation with the Tribe and the local community, consistent with parameters set forth by Congress in this legislation. The benefits of either approach are that it would clearly establish the beneficiary's expectations, clearly define the roles and responsibilities of each party, and establish how certain services are provided to tribal members.

While the legislation as introduced does not reference a map of the acres to be transferred, it is our understanding that the Pueblo seeks to acquire approximately 11,514 acres of public land located west of, and contiguous to, the main body of the Pueblo's current reservation. These lands would provide a connecting corridor with a second block of Zia Pueblo lands to the northwest of the main body of the reservation. Through previous acquisitions of public land in 1978 and 1986, as well as the recent purchase of private lands, the Pueblo now has control over 200 square miles of land.

S. 1649 would allow the Pueblo to acquire all right, title and interest (including mineral rights) to additional public land located adjacent to the reservation and the Ojito Wilderness study area. Under the bill, the transfer would be subject to valid existing rights and the continuing right of the public to access the land for recreational, scientific, educational, paleontological, and conservation uses, subject to regulations adopted by the Pueblo and approved by the Secretary of the Interior. The use of motorized vehicles off of approved roads, mineral extraction, housing,



gaming, and other commercial enterprises would be prohibited, and the Pueblo would be required to pay the Secretary fair market value for the lands.

We respect the efforts of the Pueblo to protect its religious and cultural sites in the area and to consolidate its reservation lands. However, we are concerned that several of the bill's provisions may be insufficient to protect the public interest. Currently, for example, public access to both the WSA and the two Areas of Critical Environmental Concern (ACECs) which overlap the area is across BLM-managed public lands that we believe are intended for transfer to trust status under the bill. Section 5(d) of the legislation, as noted earlier, makes the transfer subject to the continuing right of the public to access the land under regulations to be adopted by the Pueblo and approved by the Secretary. In practice, however, public access across those lands after their transfer into trust status, and continued use of the area by the public, may be inconsistent with Pueblo's interest in protecting the religious, cultural, and archaeological resources on the lands.

The only remedy S. 1649 offers to persons denied access to these areas is a right to sue the Pueblo in Federal Court. It seems inappropriate that day visitors seeking access to the Ojito wilderness area for recreational or scientific purposes would have no relief from restricted access save litigation.

Although Section 5(a) of the bill makes the transfer subject to valid existing rights and Sec. 5(f) addresses rights-of-way, the effect of these provisions to ensure continued access may be limited. The BLM is concerned about preserving access to and on six roads crossing current BLM-managed lands. Specifically, Cabezón Road (County Road 906), Pipeline Road (County Road 923), Gas Company Road, Marquez Wash Road, Chucho Arroyo Road, and Querercia Arroyo Road are roads currently used by the public to access BLM lands, but will be wholly or partially on trust lands following the proposed transfer. Although these roads are in public use, they do not have rights of way. We believe the public interest would be better served by amending the legislation to grant the BLM a permanent easement of adequate specified width for each of the corridors of land underlying these roads. Where these roads lie on or near the outskirts of the proposed Ojito Wilderness it may make sense simply to maintain BLM ownership of the lands from the wilderness to the far edge of the road corridor.

We would like to work with the sponsors of the legislation and the Committee to address these concerns.

Thank you for the opportunity to testify on S. 1649. I would be pleased to answer any questions.

PREPARED STATEMENT OF KATHLEEN BURTON CLARKE, DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, ON S. 1466 AND S. 1421

Mr. Chairman and Members of the Committee, I am Kathleen Clarke, Director of the Bureau of Land Management, Department of the Interior. I appreciate the opportunity to appear before you today to present the Department's views on S. 1466, the Alaska Land Transfer Acceleration Act of 2003 and S. 1421, the Alaska Native Allotment Subdivision Act. The Department supports the intent of both of these bills. We would like to work with Committee to make certain technical amendments designed to clarify and strengthen the bills.

S. 1466, ALASKA LAND TRANSFER ACCELERATION ACT OF 2003

#### *Background*

The Bureau of Land Management (BLM) is the Department of the Interior's designated land survey and title transfer agent. The BLM in Alaska manages the largest land conveyance program in the United States one that requires the survey and conveyance of nearly 150 million acres of Alaska's 365 million-acre land base.

Consistent with the requirements of applicable Alaska land transfer laws, including the Native Allotment Act of 1906, the Alaska Native Claims Settlement Act (ANCSA), and the Alaska Statehood Act, for the past 30 years, the BLM in Alaska has worked diligently to implement this massive program. However, the pace of land conveyances has been slow for a variety of reasons. The original framework established by these statutes and the implementing regulations provided appropriate direction and guidance for the BLM to begin these large land transfer efforts, but current laws and regulations do not provide the necessary tools for the BLM to complete the transfers efficiently and promptly. The laws themselves have been amended, superceded, and re-interpreted by judicial review many times. Each time this has occurred, the BLM has been required to reassess, review, and re-sort land title claims to make certain that the BLM's actions with respect to all land claims and interests are appropriate, consistent with the interpretation of the applicable laws, and legally defensible. Delays in the completion of these transfers have resulted.

In the Fall of 2002, Secretary Norton and I, along with other Departmental and Bureau officials, met with representatives of several Alaska Native corporations. During those meetings, Alaska Natives expressed urgent concerns about the pace of the legislatively-mandated land transfers. The Alaska congressional delegation and officials of the State of Alaska have raised similar concerns and have expressed an interest in accelerating land conveyances so they are completed by 2009.

The Department of the Interior recognizes these long-standing concerns and shares an interest in completing the land transfers in an expeditious manner. The completion of all Alaska land entitlements and the establishment of land ownership boundaries are essential to the proper management of lands and resources in Alaska.

In order to fully understand the status of Alaska land transfers, it is necessary to understand the interconnected nature of the underlying transfer legislation, the complexity and range of issues involved in the BLM's Alaska land conveyance program, and related terminology.

“ALLOTMENTS” BACKGROUND—NATIVE ALLOTMENT ACT OF 1906/ALASKA NATIVE  
VETERANS ALLOTMENT ACT OF 1998

Land “allotments” are land conveyances from the Federal Government to qualified individual applicants as authorized by law. The Native Allotment Act of 1906 authorized individual Indians, Aleuts, and Eskimos in Alaska to acquire an allotment consisting of one or more parcels of land not to exceed a total of 160 acres. Alaska Natives filed approximately 10,000 allotment applications for almost 16,000 parcels of land statewide under this Act before its repeal in 1971.

The Alaska Native Veterans Allotment Act of 1998 (Veterans Allotment Act) provided certain Alaska Native Vietnam-era veterans, who missed applying for an allotment due to military service, the opportunity to apply under the terms of the 1906 Native Allotment Act as it existed before its repeal. There were 743 applications filed for approximately 993 parcels under the Veterans Allotment Act before the application deadline closed on January 31, 2002.

The BLM's total allotment workload remaining to be processed consists of 2,769 parcels—including 2,191 parcels filed under the 1906 Act and 578 parcels filed under the 1998 Act. Each of these individual remaining parcels must be separately adjudicated based on its unique facts and, if valid, surveyed and conveyed. Furthermore, of these remaining 2,769 parcels, approximately 1,016 parcels are on lands no longer owned by the United States. On these 1,016 parcels, the BLM is required by law to investigate and attempt to recover title to each parcel in order to convey the lands to the individual Native applicant.

“ENTITLEMENTS” BACKGROUND—PRE-STATEHOOD GRANTS/ALASKA  
STATEHOOD ACT OF 1958

Land acreage “entitlements” are specified amounts of land that are designated by law for conveyance to the State of Alaska or to qualified Native entities. In order to receive its land acreage entitlement, a qualified entity or the State must file land “selection” applications that identify the specific lands to be conveyed to meet the authorized entitlement.

Pre-Statehood grants and the Alaska Statehood Act of 1958 entitle the State of Alaska to 104.5 million acres. Of this total acreage to be conveyed, the BLM has taken final adjudicative action on, surveyed, and patented nearly 43 million acres. Final adjudication and title transfer have taken place on an additional 47 million acres, but final survey and patent work remains to be completed on this acreage. The remaining 15 million acres to be conveyed have not been prioritized for conveyance by the State, and thus conveyance work on this acreage has not yet begun. Over 4,400 applications must still be addressed and approximately 3,000 townships (an area roughly the size of the State of Colorado) must be surveyed before the State's entitlements can be completed by issuance of final patents.

“ENTITLEMENTS” BACKGROUND—ALASKA NATIVE CLAIMS  
SETTLEMENT ACT OF 1971 (ANCSA)

The Alaska Native Claims Settlement Act of 1971 (ANCSA) and its amendments were enacted to settle aboriginal land claims in Alaska. ANCSA established 12 regional corporations and over 200 village corporations to receive approximately 45.6 million acres of land. This is the largest aboriginal land claim settlement in the history of the United States. Of these 45.6 million acres to be conveyed under ANCSA, the BLM has issued final patents on over 18 million acres. Final adjudication and title transfer have taken place on an additional 19 million acres, but final survey and patent work remains to be completed on this acreage. The BLM is unable to

adjudicate, survey and convey the remaining 8.4 million acres because many Native corporations have significantly more acres selected than remain in their entitlements, and the corporations must identify which selections will be used to meet their remaining entitlements.

#### IMPEDIMENTS TO COMPLETING CONVEYANCES (ALLOTMENTS & ENTITLEMENTS)

The BLM is responsible for adjudicating land claims, conducting and finalizing Cadastral land surveys, and transferring legal land title. The land transfer work is complicated, both operationally, due to remote locations and extreme weather conditions, and administratively, due to complex case law and processes for transferring lands from Federal ownership to other parties.

The vast majority of the 2,769 remaining Native allotment claims must be finalized before the ANCSA corporations and the State can receive their full entitlements authorized under law. This is primarily because most lands claimed as allotments are also selected by at least one ANCSA corporation and may also be selected (or “top-filed”) by the State of Alaska. In order to determine whether these lands are available for conveyance as part of the State’s or an ANCSA corporation’s entitlement, and to avoid creating isolated tracts of Federal land, there must first be final resolution of the allotment claims.

The adjudication of the 2,769 Native allotments is arduous and time-consuming for a variety of reasons, including evolving case law and complex land status. In addition, statutory deadlines imposed in subsequently enacted legislation also can have the effect of delaying work on existing priorities and previously-made land transfer commitments.

The filing of reconstructed applications, requests for reinstatement of closed cases, the reopening of closed cases, changes in land description, and the recovery of title also cause lengthy delays in completion of the Native allotment program. Finally, delays in the scheduling of due process hearings, the need to await the outcome of prolonged administrative appeal procedures, and litigation in the Federal court system can add years to the process. All of these issues unduly complicate completion of the remaining 2,769 Native allotments claims.

The processing of ANCSA entitlements also can be delayed for reasons other than Native allotment applications. Alaska Native Corporations are State-chartered corporations. They are valid legal entities only when they comply with the laws of the State of Alaska. Some Native corporations have been dissolved for failure to comply with State law. New conveyances cannot be made to a corporation if it ceases to exist. Additionally, while many Native corporations have applied for significant amounts of land in excess of their official entitlement acreage, there are also instances where village corporations have not made adequate selections to meet their entitlements. Section 1410 of the Alaska National Interest Lands Conservation Act (ANILCA) of 1980 provides a means by which additional lands can be made available to solve the under-selection problem, but the Section 1410 withdrawal and selection process can be cumbersome and time-consuming.

Completion of State entitlements is complicated by ANCSA over-selections and Federal mining claims. Unrestricted over-selections by ANCSA corporations mean that the State will have to wait for ANCSA corporations to receive final entitlement acreage before the State knows what lands will be available for conveyance to it. Lands encumbered by properly filed and maintained Federal mining claims also complicate the process and are not available for final conveyance to the State. The surrounding land can be transferred to the State, but excluded mining claims then constitute individual, isolated enclaves of Federal lands which are difficult to manage and, under current law, must be segregated by costly exclusion surveys before issuance of a patent to the State.

#### EXPEDITING THE ALASKA LAND TRANSFER PROGRAM

Over the years, the BLM has extensively analyzed the land transfer program in order to streamline processes and expedite conveyances. In 1999, the BLM, working in partnership with its customers and stakeholders (including Native entities and the State of Alaska), developed a strategic plan that would result in completion of the remaining land transfer work by 2020. The BLM is implementing this strategic plan, and, under current law, the Bureau anticipates completion of the land conveyances by 2020.

Congress, through the Conference Report on the Department of the Interior’s FY 2003 appropriation (House Report 108-10, February 12, 2003), directed the BLM to develop a plan to complete the Alaska land transfer program by 2009. In order to comply with this direction, BLM officials have met with staff from the Alaska Congressional delegation, Native entities, environmental groups, industry, the State,

and other bureaus and offices within the Department, as well as the Forest Service, to discuss innovative ideas and to get feedback on the land transfer process. S. 1466 was introduced as a legislative solution on July 25, 2003, to eliminate the unintended delays in the conveyance process. In BLM's opinion, S. 1466 will eliminate many of the delays that currently exist in the adjudication and conveyance of Native allotments, State and ANCSA entitlements. It also provides flexibility in negotiating final entitlements. The following summarizes some of the major provisions of the bill.

#### TITLE I—STATE CONVEYANCES

S. 1466 enables the BLM to accelerate conveyances to the State of Alaska, reduces costs associated with processing State conveyances, and simplifies the BLM's land management responsibilities by addressing statutory and regulatory minimum acreage requirements. The bill allows the State to obtain title to improved properties of significant value to local communities in which the United States retained a reversionary interest. It also allows the State to receive title to areas that are currently withdrawn from State selection due to their identification of having hydroelectric potential, while still maintaining the Federal Government's right of re-entry under the Federal Power Act.

The bill also facilitates completion of the University of Alaska's 456-acre remaining entitlement under current law (the Act of January 21, 1929) by increasing the pool of land from which the University can make its final selections. The 1929 Act limited University selections to lands already surveyed. S. 1466 allows the University to use its remaining entitlement to select the reversionary interests in lands it owns and, with the consent of the current landowner, the reversionary interest in lands owned by others under the Recreation and Public Purposes Act (R&PP).

When lands were conveyed to various entities under the R&PP Act, the Federal government retained minerals as well a reversionary interest in the property. These lands were applied for under the R&PP Act because of their suitability for development purposes or community use. The BLM must continually monitor these small properties to assure that the owners are in compliance with the original terms of the conveyance. If there is a violation of the original use, the BLM must take the necessary steps to assert that an event triggering reversion has occurred and then plan for the subsequent use or disposition of the property when it comes back into Federal ownership. As these lands have already been surveyed, one logical use for the reverted property would be to fulfill the University's 1929 entitlement. By allowing the University to select reversionary interests, the BLM is freed from current monitoring costs and responsibilities. Under this proposal, the University will be required to expend one acre of remaining entitlement for each acre of reversionary interest received. Another option extended to the University under this bill is the ability to select unsurveyed, public domain lands with the concurrence of the Secretary. These changes will substantially increase the pool of lands from which the University may choose, are consistent with the intent of the 1929 Act to provide lands which are capable of generating revenues, and are expected to lead to final resolution of this seven-decade old entitlement.

#### TITLE II—ANCSA PROVISIONS

S. 1466 expedites the land transfer process to ANCSA corporations by giving the BLM the tools to complete ANCSA entitlements. Currently, when an Alaska Native corporation's existence has been terminated under State law, all BLM land transactions with the corporation are suspended. Title II provides a mechanism for BLM to transfer lands by giving terminated corporations two years from the date of enactment to become reestablished. If this does not occur, then the bill directs the BLM to transfer the remaining entitlement to the appropriate Regional Corporation. The bill also establishes deadlines by which Regional corporations must complete assignments of acreages to villages (so-called "12(b) lands"). The legislation also allows village entitlements established by ANCSA (so-called "12(a) lands") and acreage assigned by Regional Corporations to villages to be combined, which will expedite adjudication, survey, and patent of all village lands. In addition, the bill permits the BLM to "round up" final entitlements to encompass the last whole sections. Thus, under the bill, it will no longer be necessary for BLM to survey down to the last acre, which often requires more than one field survey season.

The bill also accelerates the completion of ANCSA conveyances by amending ANCSA (section 14(h)) to allow for the completion of the conveyance of certain cemetery and historical sites, as well as other critical conveyances. Under ANCSA, regional corporations will not know their final acreage entitlements until the BLM has completed the adjudication and survey of nearly 1,800 individual cemetery and his-

torical sites. S. 1466 provides options for the rapid settlement of these regional entitlements, an issue of critical importance to Regional corporations. In establishing an expedited process, we would like to work with the Committee on amending Section 14(h) to ensure that the bill addresses concerns of Alaska Natives regarding potential location errors, waiver of regulations, and related matters.

#### TITLE III—NATIVE ALLOTMENTS

Finalizing Native allotment applications is essential to the completion of the entire land transfer program. Numerous requests for reinstatement of closed Native allotment applications; allegations of lost applications; and amendments of existing applications to change land descriptions have profound impacts on all land conveyances, not just the ongoing adjudication of an individual Native allotment application.

S. 1466 finalizes the list of pending Native allotments and the location of those allotments. It does so by establishing a final deadline after which no applications will be reinstated or reconstructed and no closed applications will be reopened. It also prohibits applicants and heirs from initiating any further amendments, thus fixing the location of the claim. Without some means of finalizing the list of allotment applications and locations, it will be extremely difficult for the BLM to complete the land transfers, the State and ANCSA landowners will have no certainty that their title is secure, and selection patterns surrounding allotment applications will be difficult to finalize and patent.

The bill also addresses instances where allotment claims are for lands no longer in Federal ownership. S. 1466 expedites recovery of title from both the State and ANCSA corporations by streamlining the current procedures. It permits ANCSA corporations to negotiate with the allotment applicant in order to provide substitute lands to the claimant for lands the corporation would prefer not to reconvey. The State has had this authority for over 10 years (P.L. 102-415, Oct. 14, 1992). Under the bill, a deed also can be tendered to the United States for reconveyance to an applicant, without requiring the BLM to do additional field examinations to meet Department of Justice rules for land acquisition.

#### TITLE IV—DEADLINES

In order to complete the land transfers by 2009, the bill establishes sequential deadlines for the prioritizing of selections. The bill staggers the deadlines and allows six months between them for Native Village Corporations, Native Regional Corporations, and, the State of Alaska, in that order. These six-month periods allow the entities that are next in line to know the final boundaries of the preceding entity.

#### TITLE V—HEARINGS & APPEALS

S. 1466 directs the Secretary to establish a hearings and appeals process to issue final Department of the Interior decisions for all disputed land transfer decisions issued in the State, and authorizes the hiring of new staff to facilitate this work. While the Department is already acting to expedite decisions on all business before the Office of Hearings and Appeals, and in particular to quickly address older cases, a process dedicated to resolving Alaska land transfer disputes will facilitate the conduct of hearings and the issuance of decisions.

#### TITLE VI—REPORT TO CONGRESS

Finally, S. 1466 requires the BLM to report to Congress on the status of conveyances and recommendations for completing the conveyances.

Since the time of the August field hearing, we have been part of the continuing dialogue regarding this bill. For example, we have heard from representatives of the Native Allotment Community that they have concerns about establishing appropriate deadlines that are fair to allotment applicants yet, at the same time, still allow for achievement of final land transfers by 2009. As I noted at the beginning of my statement, we want to work with the Committee to address these and other technical changes in order to strengthen and clarify this important piece of legislation.

#### S. 1421, ALASKA NATIVE ALLOTMENT SUBDIVISION ACT

##### *Background*

The purpose of the Federal statutory restrictions placed on Alaska Native allotments and restricted Native townsite lots is to protect Alaska Native owners against loss of their lands by taxation, and to provide oversight of any alienation of such lands for the owners' protection. Generally, these lands are administered according

to Federal law, particularly as it may relate to the issuance of rights-of-way, easements for utilities, and other public purposes. An unintended consequence of these protections is that when an owner of restricted land attempts to subdivide and sell his property or dedicate certain portions for easements and other public purposes, all in compliance with state or local subdivision platting requirements, it is not clear whether those dedications constitute valid acts under Federal law. This uncertainty has worked to the disadvantage of owners of restricted land who wish to subdivide and develop their property.

The economic advantages of subdivision in compliance with State and local law have led a number of Alaska Native allotment owners over the past two decades to survey their property for subdivision plats, and to submit the surveys to local authorities for approval. These plats typically contained Certificates of Ownership and Dedication, whereby the land owners purported to dedicate to the public land for roads, utility easements, or other public uses. Platting authorities, the public, individual subdivision lot buyers, and the restricted land owners relied on these dedications and the presumption that they were binding and enforceable.

However, in late 2000, the Department of the Interior's Office of the Solicitor recognized that this presumption was not clearly established in law. In response, the Bureau of Indian Affairs and realty service providers authorized under the Indian Self-Determination Act sought to overcome the doubts raised about the validity of past dedications. Their solution relied on the Secretary of the Interior's authority under Federal law to grant rights-of-way and easements identical to those interests dedicated on the face of existing subdivision plats.

This approach, however, has proven to be unsatisfactory. It creates substantial extra work for government and realty service providers. More importantly, the State of Alaska and some affected Boroughs are unwilling to apply for or accept title to such rights-of-way on behalf of the public. These units of government understandably prefer that public rights be established by dedication, rather than direct title transfers, which might saddle the local government with maintenance or tort liability. Without the participation of platting authorities and governments, it is difficult to resolve uncertainties as to the validity of dedications on previously filed and approved subdivision plats. Moreover, it is impossible for Native owners of restricted lands who, in the future, may wish to subdivide their land in accordance with State or local platting requirements, to do so without first terminating the restricted status of their lands.

#### S. 1421

S. 1421 would authorize Alaska Native owners of restricted allotments, subject to the approval of the Secretary of the Interior, to subdivide their land in accordance with State and local laws governing subdivision plats, and to execute certificates of ownership and dedication with respect to these lands. The bill also would confirm the validity of past dedications that were approved by the Secretary. Ratifying past dedications will benefit all concerned parties, including the buyers and sellers of lots in affected subdivisions, the State and local governments, the Bureau of Indian Affairs, realty service providers under the Indian Self-Determination Act, and the general public. All of these entities have in the past relied upon the legal validity of dedications to the public which appeared on the face of existing plats.

Enactment of S. 1421 would remove an obstacle to pending lot sales and re-sales in existing subdivisions. It would pave the way for other Native owners of restricted lands to create new subdivisions in compliance with State or local platting requirements without forcing them to choose between the financial benefits of compliance with State law and the retention of protections against taxation and creditor's claims inherent in the restricted status of their lands. This feature is clarified by Section 5(b) of S. 1421, which provides that Federal restrictions against taxation and alienation are only lost by compliance with State or local platting requirements as to those specific interests expressly dedicated in the Certificate of Ownership and Dedication.

The Department recommends amending Section 4(a)(1) of the bill to read, "subdivide the restricted land for rights-of-way for public access, easements for utility installation, use and maintenance and for other public purposes, in accordance with the laws of the—" to make this section consistent with the findings in Section 2(a)(b)(c) of the bill. Additionally, the Department recommends adding a new section to the bill authorizing the promulgation of regulations to clarify how S. 1421 would be implemented.

## CONCLUSION

In closing, I would like to thank the Committee for its continuing commitment to address these complex issues, and reiterate the Department's support for the intent of these bills. If enacted with certain technical changes, S. 1466 will go a long way in expediting land transfers and promoting the proper management of all lands and resources in Alaska, and S. 1421 will allow Native Alaskans to subdivide their restricted allotment lands with the approval of the Secretary. We look forward to working with the Committee on technical amendments to both of these bills. I will be happy to answer any questions you may have.

Senator MURKOWSKI. Thank you. I appreciate your comments this afternoon.

When we were moving forward initially with this legislation, the question has to be asked, why do we have to have legislation in order to complete the conveyances of land that was promised close to 50 years ago? Your agency, BLM—this is what you are charged to do. Why do we need to have the legislation in order to finalize the entitlements?

Ms. CLARKE. I believe it is because the several different laws that direct us to resolve these land patterns were never properly merged, and so we find ourselves with some conflicting, competing directions, and we lack the authority to resolve those ourselves.

In some of them, we lack deadlines. There has to be a time certain in which you say, case closed, it is time to move on. Yet, in some of these instances, we have allowed for people to come in and make selections and then change their mind and resubmit. So we are in a continual process of readjusting some of those requests. We have a very difficult time bringing things to closure.

Also, the land transfers are sequenced. Until we settle this set of land transfers, we cannot address this set and the next set.

What this law would do is it would close some of those loopholes, set some secure deadlines, and expand some of our authority so that we can merge these bills in a positive framework that allows us to bring some expedited attention to this challenge.

I think the people of Alaska deserve nothing less. As you said, it has been way too long. Other States were granted that land at Statehood and had it from that moment forward. Alaska is still waiting to have this. Native Alaskans are waiting to have land granted to them, and it is clear under the existing authorities and deadlines and processes we are not going to get there. We certainly hope that we can get these new tools in our tool box so that we can serve the Alaskan people better and help them secure what they are entitled to.

Senator MURKOWSKI. You have mentioned the deadlines. Obviously, we are looking to a deadline or a goal of conveyance by the year 2009. One of the concerns that has been raised about this legislation is that, well, if you cut things off, if you apply deadlines, if you do say, okay, time is up, that certain due process rights might be abbreviated or perhaps pulled. And there is a concern that we make sure that we still allow for the due process for all those involved. Can you speak to that aspect of it and give the assurance to those people who have the concern in this specific area?

Ms. CLARKE. I think there is a section in this law that would secure for 10 native corporations an already set percentage share of their final allocations that has raised due process concerns. Con-

gress, if this law passes, would thereby establish the final acreage to be established and it would be done.

Again, I think if we do not have this legislation, there is no way we can get to a timely resolution of the entitlements. Native corporations, for example, would be forced to seek legislative relief or just wait until there was final resolution of what we call the 14(h) claims, and this includes cemetery claims, historical sites, and a whole other slew of opportunities for claims. Like I said, it is the sequencing. We could not even get to them. So this gives us some authority to move forward.

Henri may have a little better insight into some of the issues relative to process and public involvement and how we would address that.

Senator MURKOWSKI. Mr. Bisson.

Mr. BISSON. Yes. Senator, the legislation does not breach people's rights to challenge our decisions relative to the allotments and the selections of land and so on. People will still be able to appeal decisions. There is a provision in the legislation for an appeal function to be focused in Alaska to expedite the processes, and we will still go through a public notification process. I don't see this as abridging people's rights to protect their interests and to challenge decisions that they feel are inequitable.

Senator MURKOWSKI. There has also been a fair amount of concern I guess or perhaps the concern arises from not knowing what would happen, what will happen when we convey the last remaining entitlement of land to the Kaktovik Village Corporation, which as we all know, happens to be located on the coastal plain. But the only way that Kaktovik can receive its final entitlement is through this legislation.

The question would be how many acres would they receive? Where is it in relation to the existing land? And a question that I was able to ask one of your fine employees yesterday of 25 years I learned, Linda Ressiguies, does this in fact allow Kaktovik to proceed with oil and gas exploration if the conveyance were to be final?

Ms. CLARKE. My understanding is that they are entitled to an additional 2,000 acres. The land that would be conveyed to them is adjacent to their existing holding, and all of the restrictions on oil and gas development in that area continue to prevail. There is nothing in this legislation which undoes the current restrictions. So I don't think that is a valid concern.

I understand that the 2,000 is almost a technical correction because of redefinition of what they were entitled to.

Do you want to elaborate on that?

Mr. BISSON. If I could, Senator [referring to a map on display].

Senator MURKOWSKI. I cannot tell what any of the pink squares mean.

Mr. BISSON. If you can separate green from pink.

Senator MURKOWSKI. Okay.

Mr. BISSON. The green areas on that map are in fact the 2,000 acres that this legislation would permit to be conveyed to the Village of Kaktovik. The Federal Government promised them 92,000 acres. This is the last 2,000 acres to be conveyed to them. It cannot be conveyed without this legislation. You can see that one of the



parcels is actually adjacent on three sides to existing Kaktovik lands, private lands that they own. The other parcel is adjacent to those lands on two sides. So this is not a widely dispersed entitlement that they have asked for. It is logical and it is adjacent to lands they already have.

This conveyance does not change the existing provisions that prevent any drilling, oil and gas leasing or exploration from occurring in ANWR. That can only be dealt with through separate action by Congress. So this has absolutely no impact whatsoever on that issue of oil and gas leasing in ANWR, in the 1002 area specifically.

Senator MURKOWSKI. Thank you for that clarification.

The point has been made not only by Senator Stevens and myself, but you, Ms. Clarke, about the pieces of legislation over the years that have really complicated this land conveyance process, and now through the legislation that I have introduced, we have yet one more piece of conveyance legislation. How can we be assured that this one is actually going to help us with the conveyance instead of just adding one more layer of complication?

Ms. CLARKE. Thankfully, we do have those employees who have been working with those other pieces of legislation for 25 years, and I think they have really helped us identify where the fragmentation is between the laws, where we need to build bridges between one law and another, and to identify what we need. I have reviewed it with them. I know State Director Bisson has. We have covered these with you, and I am very confident that what we are really doing is, like I say, creating the mechanisms to make these bills compliment one another and serve the people of Alaska rather than confuse and confound them in the process.

So I feel very good about it. We would welcome other ideas or feedback from any interested parties, from the committee, but I feel like we are finally resolving the morass and creating an opportunity to make all of those work for the citizens of Alaska.

Senator MURKOWSKI. Just a couple quick questions about the allotment legislation. Again, is the legislation necessary if under existing Federal law, allotment owners can already convey their private access easements to natives or non-native grantees or portions of their allotments, assuring the legal access? Why do we need to go one step further with our legislation?

Mr. Bisson.

Mr. BISSON. Director Clarke has asked me to respond.

The current authorities for subdividing and conveying of native allotments are inefficient and ill-suited to the job that needs to be done in Alaska. Allotment owners can convey these interests with appropriate secretarial approval, but local authorities are reluctant to apply for and accept grants for rights-of-way and so on because of potential liability. What they need is the ability to create plats, to subdivide their lands under State and county laws so that subsequent owners of the land will have legal title and the counties and local jurisdictions will have ownership of the roads that end up being constructed.

Title, even if it is passed on from an allottee to successors, is not easily conveyed because the State property is not a State-recognized subdivided parcel. This is private land. All that I think the legislation does is give the native allottee the option of either re-

taining the protections offered by the Secretary or subdividing it under State law and passing title on.

Senator MURKOWSKI. So the allotment owner could not simply have his land removed from the restricted status and then comply with the State or local law then?

Mr. BISSON. It is their option.

Senator MURKOWSKI. They could not?

Mr. BISSON. No. They cannot comply with State and borough laws under the existing authorities and still retain the lands' restricted status.

Senator MURKOWSKI. Senator Bingaman, did you have any questions that you wanted to present to the first panel?

Senator BINGAMAN. Yes. Maybe I could ask Director Clarke about this testimony that she has given here about the Ojito Wilderness bill.

Your testimony seems to suggest that you believe we should do a major review and revision of the laws governing the Federal Government's trust responsibility to Indian tribes. Is that an accurate paraphrase of what you are saying here?

Ms. CLARKE. Senator Bingaman, I will have to tell that in regards to the concerns about trust responsibility that have been raised by the Department, we have really deferred to their judgment. I think you are very aware that the Secretary has found herself with many challenges relative to trust responsibilities, to how they are interpreted, to what appropriate roles and responsibilities are, and those are being litigated. And it has been a very, very challenging exercise.

I think the concern is not that we use this bill to create an entire protocol for everything but that within the context of this bill that we identify what appropriate trust responsibilities should be.

We would certainly be willing to work through this with the committee and see if we cannot find some common ground here. I think this is a reflection of the great concern and care that the Department is feeling compelled to apply to any issues relative to trust management.

I want to apologize that the content of this statement was a surprise to you today and regret that we did not have an opportunity to really explore this. Like I say, I also want to reaffirm a commitment to see if we cannot come to terms. I do not think it is essential that this become a template for a solution to the overall trust problem, but in this instance that we have some clarity and precision in the way we approach this.

Senator BINGAMAN. Just to give you my own perspective on it, I do think that always before when there has been a bill here in the committee to transfer land into trust status, the committee has assumed that the large body of law that has been built up over many decades which defines what those responsibilities are on both sides would govern that. We have not gone through with regard to each parcel of land and said here is what we mean by the Secretary's trust responsibility as to this piece of land and then next week we will do it differently as to another piece of land. And I would hate to see us start down that road.

In the first place, I do not think that the Committee on Indian Affairs would allow us to. If there is going to be a rewrite of the

trust responsibility law, the Committee on Indian Affairs is understandably going to want to be the main place where that happens. I would hate to see us trying to do that on a sort of ad hoc basis with each piece of legislation.

Ms. CLARKE. I would agree with your concerns that we want to be consistent in our application of the trust responsibility concept. Again, I think that what we are saying here is a reflection of some super-sensitivity to this entire issue because of the challenges the Secretary has faced.

I would love to have an opportunity to work with your staff and yourself to see if we cannot find a way to bridge the gap that we have identified here. I think there are players at the Department of the Interior in our trust area that probably would need to be engaged that I do not know have been.

And so I think this testimony is a reflection of a sense that we have not fully covered our bases to come to a position today where we can say we fully support this bill. I think we have concerns. My testimony does not say they are not concerns that we cannot address or certainly that we are not willing to try to address. I think it is important that we take a look at what is here and see what we can do to make it work.

Senator BINGAMAN. Thank you very much.

Senator MURKOWSKI. Thank you. I appreciate your testimony, Director Clarke, Mr. Bisson, Ms. Rundell.

Let us go to the second panel and welcome up Governor Peter Pino and Mr. Martin Heinrich. Governor, Mr. Heinrich, welcome to the committee. Governor, if you would like to begin with your testimony please.

**STATEMENT OF PETER M. PINO, GOVERNOR,  
PUEBLO OF ZIA, ZIA PUEBLO, NM**

Governor PINO. Thank you, Madam Chair, Senator Bingaman. I bring greetings from the Pueblo of Zia. I am the current Governor of the Pueblo. I have been the tribal administrator since 1977. I also hold one of the Pueblo's traditional spiritual positions. Before I talk to the bill, S. 1649, I would like to address the spirits in this chamber in my native language. Please bear with me.

[Native language spoken.]

Governor PINO. Madam Chair, thank you for allowing me to speak in my first language. We truly believe that there is a physical world and there is a spiritual world and we need to communicate in both spheres. That is what you have allowed me to do and I really do appreciate that.

Before I specifically talk about the support of S. 1649, I would like to give you a little bit of background of who we are as the pueblo people and who we are as Pueblo of Zia tribal members.

Essentially we migrated through the Four Corners area, Mesa Verde, Chaco Canyon, Aztec, as our people went down into the current Pueblo of Zia area. They settled different settlements in this migration route and this migration route is told and retold every year to the members of the tribal council of Zia on December 29. At the conclusion of that migration story, the cacique appoint new officers for the coming year, thereby representing the future of the pueblo. So we have the present, the past, and the future all con-

gregated in the same setting. Since then I have been the Governor for the pueblo.

In settling in that region, this migration story tells about different areas that our forefathers settled in. There are numerous pit houses in and around the present pueblo. There are five different villages that were occupied by the Zia people when the Spaniards first came into this region in 1540. One of the areas that were occupied by the Zia people the Spaniards named the Valley of Cornfields because that is what they saw. This would be around 1540. This Valley of Cornfields is on the eastern edge of this area that we are talking about here that would be transferred and put in trust for the Pueblo of Zia.

We have numerous sites throughout the area. We have retained our language. We have retained our cultural identity. Through the bouts with disease and other problems 100 years ago, Zia Pueblo numbered 97, 97 tribal members from about 15,000 when the Spaniards first came into this region. Today we number 800 people of whom most of us reside at the Pueblo of Zia. We are not a gaming tribe. We have limited financial resources. We still have our tradition and culture. We encourage self-sufficiency and subsistence activities. We as a people still hunt, gather, cultivate food crops and raise livestock just as we have for centuries. However, these activities, given the desert environment that we find ourselves in, we are in constant need, as our population grows, of a bigger land base.

We have a program that does not allow any one tribal member to exploit the resources at the Pueblo. As an example, the grazing lands are divided into grazing units and no one individual family head of household is allowed to graze more than 20 head of cattle. We know that nobody can make a living with 20 head of cattle, but this promotes community involvement where we work the cattle, where we brand cattle. We have grandkids all the way to grandparents working those cattle. It gives us a sense of community. It gives us a sense of extended family because that is who we are.

As our population has grown, we need additional property. So in the recent past, we purchased private lands, purchased the grazing rights on BLM property so that we would make contiguous two separate pieces of tribal property. This has been ongoing for decades. I have been involved with this since I started working for the tribe in 1977.

The connection of the two pieces of property is essentially to the well-management of the lands that we have under our responsibility of managing. So we have been working on this for many years.

In this area, the non-Indians are aware that there is a lot of archeological resources. Those archeological resources were put there by our forefathers. Who best can provide protection for those resources but the descendants of those people?

We have natural materials used by our people that still make pottery. We have mineral paint that we use for body paint so that we can dance and participate in cultural activities. We have many shrines, sacred sites. This land is dear to all of us as tribal members.

We have tried not to displace anybody. As indicated earlier, we purchased private property. We purchased grazing rights to some of the BLM property. We do not want to displace anybody or we do not want anybody to be adversely impacted by the efforts that we have put forward as a pueblo.

Originally, we had asked for 24,000-plus acres of BLM lands to be placed in trust for the Pueblo of Zia. Since then, we have decreased the land area that we are hoping would be passed through legislation and be put in trust for Zia. We have agreed to exclude from our transfer request the Ojito Wilderness Study Area. We have also agreed to exclude the area of critical environmental concern that has been designated by the Bureau of Land Management.

In addition to this major concession, we have also agreed to provide continued access for the public to the lands that would be transferred to Zia. We commit to preserve the land in its natural beauty and open state, and we have agreed to pay BLM for these lands that are aboriginal tribal property. That was a hard decision to make. After all, this was aboriginal tribal property. We have limited financial resources, but the council feels that this is an area that is sacred to the past, to the present, and will be sacred in the future.

We had thought that we finally came up with a legislative proposal that would be both supported by the pueblo and BLM.

Senator MURKOWSKI. Governor Pino, I am going to have to ask you to wrap up. We have just been notified that we have a vote coming up, and I would like to get this panel completed before we do that.

Governor PINO. Okay. I will go ahead and summarize.

Senator MURKOWSKI. Yes, because we will have your full and complete written testimony included in the record.

Governor PINO. Okay. I hope you can appreciate how long and difficult the efforts leading to the introduction of this legislation have been for us. We have attempted to address many interests, many issues, many concerns raised by the proposed transfer of land and to ensure that no one's property interest is adversely affected. We have spent millions to essentially have impact and be around the Ojito area once again as our forefathers have done. We have the support of the State of New Mexico. We have the support of tribal governments, local governments, conservation and user groups, neighboring ranchers, businesses, and tourist groups and others. We are very proud of the widespread bipartisan support that we have on this bill.

In closing, I want to express special thanks to Senators Domenici and Bingaman for jointly introducing S. 1649 and to all that have expressed support for it.

I also want to express our appreciation to our BLM State Director Linda Rundell and her staff for sitting down and working with us on this legislation. We look forward to continuing to work with them on the implementation of this legislation.

With that, I want to thank the subcommittee for the opportunity to testify on this important bill, and I am happy to entertain any questions that the committee members may have.

[The prepared statement of Governor Pino follows:]

PREPARED STATEMENT OF PETER M. PINO, GOVERNOR, PUEBLO OF ZIA,  
ZIA PUEBLO, NM

Good afternoon. I am Peter Pino, the current Governor of the Pueblo of Zia and the tribal administrator since 1977. I am also one of the Pueblo's traditional spiritual leaders. Before talking about Senate Bill 1649 I would like to give you some very brief background on the Pueblo of Zia.

We are a very traditional tribe—one that has retained its language and cultural identity despite the fact that just 100 years ago we were down to only 97 members, and the fact that today Albuquerque and its suburbs are less than 30 minutes away. Today we have about 800 members, virtually all of whom live on our Reservation. Though we are a non-gaming tribe with limited financial resources, we have prospered as a tribe and as a people because of our strong culture and traditions. We strongly encourage self-sufficiency and subsistence activities. Most of us still hunt, gather, cultivate food crops, and raise livestock, just as we have for centuries. However, these activities, given the desert environment in which we live, require a substantial land area and conservation-minded management of our animal, plant, water and mineral resources. We also have taken unique steps to ensure that all of our tribal members have an equal opportunity to utilize these resources, and that no one exploits them. For example, our grazing lands are divided into range units based on their carrying capacity. These individual range units are shared by several families who are permitted to graze up to 20 heads of cattle each.

This limitation means that while no one can make a living off of their cattle alone, all have an opportunity to raise livestock for subsistence and additional income. It also reinforces the close connection that our members have to the land and encourages our families to work closely and cooperatively together in managing our rangelands and their livestock.

As our population has grown, so has our need for an adequate land base to sustain our people. We have been fortunate in recent years to be able to acquire some private lands in and around our Reservation, and to utilize adjacent BLM lands for grazing purposes under a cooperative management agreement. However, we have not been able to maximize the full utilization and effective management and protection of our reservation lands because they lie in two, non-contiguous pieces, separated by an area of rugged, BLM-controlled lands that were once an integral part of our aboriginal homelands and are still actively used by our people today.

For over a decade, I have been intimately involved in the Pueblo's long-standing quest to connect the two separate pieces of our Reservation and to ensure the preservation of this rugged and beautiful area. Its lands and resources are of enormous cultural importance to our people and have been utilized by us since time immemorial. They contain significant archeological resources, natural materials used by our people in pottery making, and innumerable shrines and sacred sites.

As part of our decade-long efforts to reacquire these important ancestral lands, the Pueblo has taken steps to ensure that private property owners in and around the Ojito area will not be displaced or otherwise adversely impacted. For example, we have spent millions of our limited tribal funds to purchase private lands and grazing permits in and around the Ojito area, purchases which help assure the protection of the Ojito's unique beauty. The few remaining private property owners have been assured their property interests will be protected and they support the proposed legislation.

While we originally sought the transfer of all 24,000 plus acres of these BLM lands, we have endeavored to work with local BLM officials to come up with a transfer proposal that they could support. In doing so, we subsequently agreed to exclude the Ojito Wilderness Study Area and surrounding Area of Critical Environmental Concern (ACEC) lands. In addition to this major concession, we also agreed to continued public access to the BLM lands to be transferred to the Pueblo, to commit to the preservation of these lands in their natural and open state, and to pay the BLM the fair market value of these lands. While some of these compromises were difficult, and it was particularly difficult for us to agree to pay for lands that had been taken from us given our very limited financial resources, we are very pleased that we have finally been able to come up with a legislative proposal that both the Pueblo and the BLM can support. I can also assure you that the Pueblo of Zia will fully comply with these conditions and will prove to be an excellent steward of these lands.

I hope you can appreciate how long and difficult the effort leading to the introduction of this legislation has been for us. We have attempted to address a myriad of interests, issues and concerns raised by the proposed transfer of lands and to ensure that no one's property interests will be adversely affected. We have spent millions of dollars acquiring lands within and adjacent to the Ojito area and have made nu-

merous changes to our legislative proposal in order to win the support of the State of New Mexico, local governments, conservation and user groups, neighboring ranchers, business and tourism groups, and others. We are very proud of the widespread, bipartisan support that has emerged for this bill.

In closing, I want to express special thanks to Senators Domenici and Bingaman for jointly introducing Senate Bill 1649 and to all that have expressed support for it. I also want to express our appreciation to our State BLM Director, Linda Rundell and her staff for sitting down and working with us on this legislation, and we look forward to continuing to work with them on the implementation of this legislation. With that, I want to thank the subcommittee for the opportunity to testify on this very important bill and I am happy to entertain any questions that committee members may have.

Senator MURKOWSKI. Thank you, Governor Pino.

Mr. Heinrich, I know that you have traveled a great distance, as has the Governor, and that is why I have allowed you additional time for your 5-minute testimony. If you think you can keep it within the 5 minutes, we can go ahead and take your testimony at this point in time. Otherwise, we are probably going to have to take a break.

Mr. HEINRICH. Yes. I am sure I can keep it within 5 minutes.

Senator MURKOWSKI. Thank you.

**STATEMENT OF MARTIN HEINRICH, CITY COUNCILOR,  
ALBUQUERQUE, NM**

Mr. HEINRICH. Madam Chairman, Senator Bingaman, and staff, thank you for the opportunity to testify today. My name is Martin Heinrich and I am a city councilor from District 6 in Albuquerque. I am here today as a local elected official as well as being a long-time volunteer in several wilderness and conservation groups in New Mexico. The testimony I will present today is on behalf of me and the Coalition for New Mexico Wilderness.

The coalition is made up of businesses and organizations that support the protection of additional wilderness in our State. The coalition currently has more than 400 individual business members, including the Albuquerque Convention and Visitors Bureau which itself represents over 1,000 businesses in my city. The coalition also includes a number of conservation groups such as the New Mexico Wilderness Alliance, the Wilderness Society, and the Rio Grande Chapter of the Sierra Club.

On behalf of the coalition, I would like to thank Senators Bingaman and Domenici and their professional staff for the hard work that has gone into this legislation. They have worked in partnership with a range of stakeholders and listened to the concerns and recommendations from all interested parties to develop this popular proposal. I would also like to thank our Bureau of Land Management State Director, Linda Rundell, for her leadership and her willingness to work with the conservation community and the Pueblo of Zia in such an open and professional manner.

S. 1649 is positive bipartisan legislation that enjoys broad support. Specifically, support for the proposed Ojito Wilderness includes unanimous endorsements from the Sandoval and Bernalillo County Commissions and the Albuquerque City Council, on which I am now proud to serve. Further, Governor Bill Richardson, Lieutenant Governor Diane Denish, State Land Commissioner Patrick Lyons, and several members of the New Mexico State Legislature have written letters of support. The Albuquerque Convention and

Visitors Bureau, recognizing the importance of tourism and wilderness recreation to our State's economy, has also endorsed the Ojito Wilderness. The Navajo, Hopi, and Zuni Nations and the All Indian Pueblo Council also have offered their support for this proposal.

S. 1649 would designate the 11,000-acre Ojito Wilderness area and allow the Pueblo of Zia to purchase certain adjacent public lands which hold strong cultural and religious significance for the people of Zia.

Under the bill, the lands to be purchased and held in trust on behalf of the pueblo will remain open to the general public and will be managed as open undeveloped space in perpetuity. We commend the Zia for their conservation-minded land management practices and are pleased to be working in partnership with them.

The Ojito Wilderness area that would be designated by this act is located less than an hour's drive northwest of Albuquerque. It has been managed by the BLM as a wilderness study area since its designation under the administration of President Ronald Reagan and was formally recommended for wilderness designation by Secretary of Interior Manuel Lujan in 1991.

The dramatic landscape of the proposed Ojito Wilderness is characterized by picturesque rock structures, multi-colored badlands, many cultural and archaeological sites, paleontological resources, and diverse plants and wildlife species. As such, the area is important for scientific research and study and makes an ideal outdoor classroom for students of all ages. As a former educator, who utilized this area for educational camping trips, I can attest to what a unique resource these land offer. In the years since I first experienced Ojito, I have been drawn back time and again to recreate with my family, photograph the landscape, lead group hikes, and just explore. This is a truly special place for me and many, many New Mexicans.

As an Albuquerque city councilor, I can tell you that New Mexicans realize that protecting wilderness helps maintain and enhance our State's unique culture and is important to our quality of life and to our local economy.

On behalf of me and the coalition, we look forward to working with the members of the committee and their staff and the offices of Senators Domenici and Bingaman on this important legislation. We particularly thank our Senators for their leadership on this bill.

Again, thank you for the opportunity to present testimony today. I am happy to entertain any questions that you have.

[The prepared statement of Mr. Heinrich follows:]

PREPARED STATEMENT OF MARTIN HEINRICH, CITY COUNCILOR,  
ALBUQUERQUE, NM

Chairman Craig, Members of the Committee and staff, thank you for the opportunity to testify today. My name is Martin Heinrich and I am a City Councilor from District 6 in Albuquerque. I am here today as a local elected official as well as a long time volunteer in several wilderness and conservation groups in New Mexico. The testimony I will present today is on behalf of me and the Coalition for New Mexico Wilderness.

The Coalition for New Mexico Wilderness is made up of businesses and organizations that support the protection of additional wilderness in our state. The Coalition currently has more than 400 individual business members including the Albuquerque Convention and Visitors Bureau which itself represents over one thousand businesses in my city. The Coalition also includes a number of conservation groups



such as the New Mexico Wilderness Alliance, the Wilderness Society, and the Rio Grande Chapter of the Sierra Club.

On behalf of the Coalition, I would like to thank Senators Bingaman and Domenici and their professional staff for the hard work that has gone into this legislation. They have worked in partnership with a range of stakeholders and listened to the concerns and recommendations from all interested parties to develop this popular proposal. I would also like to thank our Bureau of Land Management (BLM) State Director, Linda Rundell, for her leadership and her willingness to work with the conservation community and the Pueblo of Zia in such an open and professional manner.

S. 1649 IS POSITIVE, BI-PARTISAN LEGISLATION THAT ENJOYS BROAD SUPPORT FROM CONSERVATION GROUPS, BUSINESSES, LOCAL GOVERNMENTS, GOVERNOR RICHARDSON, OTHER STATE OFFICIALS, THE PUEBLO OF ZIA AND OTHER NEARBY PUEBLOS

More specifically, support for the proposed Ojito Wilderness includes unanimous endorsements from the Sandoval and Bernalillo County Commissions and the Albuquerque City Council, on which I am now proud to serve. Further, Governor Bill Richardson, Lt. Governor Diane Denish, State Land Commissioner Patrick Lyons, and several members of the New Mexico State Legislature have written letters of support. The Albuquerque Convention and Visitor's Bureau—recognizing the importance of tourism and wilderness recreation to our state's economy—has also endorsed the Ojito Wilderness. The Navajo, Hopi and Zuni Nations, and the All Indian Pueblo Council also have offered their support for the proposal.

Wilderness is close to home for most New Mexicans. In Albuquerque, the Sandia Mountain Wilderness is the backdrop to the city of Albuquerque, and the backyard recreation grounds for many city residents. New Mexico's landscape and wildlands are part of what makes our state unique. It is therefore not surprising that most New Mexicans support the protection of more wilderness areas. In fact, an August 2002 poll of 600 New Mexico voters found that three-in-five voters (59%) said they support setting aside more public land in New Mexico as wilderness areas.

#### *Section 5 of the Ojito Wilderness Act—Land Held in Trust for the Pueblo of Zia*

S. 1649 would designate the 11,000-acre Ojito Wilderness area and allow the Pueblo of Zia to purchase certain adjacent public lands, which hold strong cultural and religious significance for the people of Zia. The Pueblo of Zia has a longstanding interest in acquiring these lands that are currently managed by the Bureau of Land Management.

Under the bill, the lands to be purchased and held in Trust on behalf of the Pueblo will remain open to the general public and will be managed as open, undeveloped space in perpetuity. We commend the Zia for their conservation-minded land management practices and are pleased to be working in partnership with them toward our common goal of protecting the Ojito Wilderness and surrounding land for future generations.

All lands involved in the proposal will be open to the public for recreational use and scientific research, but be protected from off road vehicle use, mining, new roads, and other development. The existing Area of Critical Environmental Concern (ACEC) that encompasses the Ojito area and includes additional environmentally sensitive land primarily to the south and east would remain in public ownership.

#### *Section 4 of Ojito Wilderness Act—Designation of the Ojito Wilderness*

The Ojito Wilderness area that would be designated by this Act is located less than an hour's drive northwest of Albuquerque. It is currently managed by the Bureau of Land Management as a Wilderness Study Area and was recommended for permanent wilderness designation by the agency more than a decade ago.

The approximately 11,000 acres of public land that make up the proposed Ojito Wilderness are characterized by dramatic landforms and rock structures, multi-colored badlands, a high density of cultural and archeological sites, paleontological resources, and diverse plant and wildlife species.

The steep-sided mesas, remote box canyons, deep arroyos, and rough terrain of the Ojito area provide excellent opportunities for solitude and recreation including bird watching, photography, hiking, game bird hunting and camping. Visitors to the area can enjoy dramatic views of Cabezón Peak, Mesa Prieta, the Jemez Mountains, and the Sandia Mountains.

A high density of cultural and archeological resources is found in the area including petroglyphs, kivas, and other PaleoIndian, Archaic, Pueblo, Navajo and Spanish cultural sites.

Several rare plant species—including grama grass cactus, Knight's milkvetch and Townsend's aster—and several solitary stands of ponderosa pines are found here.

The area provides nesting habitat for birds of prey, swifts and swallows. Other wild-life species that have been identified in the area include mule deer, antelope, and mountain lion.

Significant paleontological sites have been found in the proposed Ojito Wilderness including one of the largest dinosaur skeletons ever discovered—that of a *Seismasaurus*. As such, the area is important for scientific research and study and also makes an ideal outdoor classroom and natural laboratory for students of all ages. As a former educator who utilized this area for educational camping trips, I can attest to what a unique resource these lands offer. Here, students can stay in a picturesque and remote wilderness setting while studying geology, paleontology, anthropology, botany and other natural sciences. There are few undisturbed landscapes that offer so many possibilities for education, recreation and inspiration. In the years since first “discovering” Ojito, I have been drawn back time and again to recreate with my family, photograph the landscape, lead group hikes, and just explore. This is a truly special place for me and many, many New Mexicans.

If approved, this legislation would create the first new wilderness area in New Mexico in over 15 years and would be one of only a handful of wilderness areas found on lands managed by the BLM in our state. The Ojito area is eminently qualified as a wilderness and passage of this legislation would continue a long, proud bi-partisan tradition in New Mexico of working to set aside special areas on our public lands in their natural state for future generations—a tradition which started with Aldo Leopold’s efforts to set aside the Gila Wilderness in southern New Mexico in the 1920s—and I am happy to say continues with this legislation today.

As an Albuquerque resident and city councilor, I can tell you that New Mexicans realize that protecting wilderness helps maintain and enhance our state’s unique culture, and is important to our quality of life and to our local economy. Protecting new wilderness areas in New Mexico—particularly an area that is as easily accessible to our state’s population centers as the Ojito area—provides a range of benefits to New Mexicans. These include recreational opportunities and a chance to enjoy a place that provides quiet and solitude—a contrast to the day-to-day challenges of urban life. New Mexico’s varied wildlands enhance our quality of life and create a powerful incentive for attracting new businesses to our state by creating the kind of environment where people want to live, work and enjoy free time with their families.

On behalf of me and the Coalition for New Mexico Wilderness, we look forward to working with Members of the Committee and their staff, and the offices of Senators Domenici and Bingaman on this important legislation. We particularly thank our Senators for their leadership on this bill and hope to be able to work with them and others in our delegation on future wilderness proposals for lands in our state.

Again, thank you for the opportunity present testimony today. I am happy to answer any questions that you may have.

Senator BINGAMAN. Well, thank you very much. Let me thank Councilman Heinrich and also Governor Pino for their excellent testimony. I do not know if there will be any questions after we return. We do have to take a short recess because of the vote situation on the Senate floor, but again, thank you for coming. We intend to move ahead with this bill as soon as we can resolve the concerns that we have heard from the Bureau of Land Management this afternoon. Thank you very much for being here and we will adjourn until about 10 minutes from now.

[Recess.]

Senator MURKOWSKI. Back on the record.

Thank you for accommodating us on that vote. Hopefully we will not have any more interruptions and keep you here too much longer.

As I indicated to our guests from New Mexico, I respect the travel time which so many of you have undergone in order to be here today. So I do want to give you the opportunity to express your support, opposition, concerns, what have you as it relates to the legislation. I do welcome all of you.

We will go in the order from my right to left recognizing, Mr. Bisson, that you are here and available to take questions. So we

will not make you speak unless we need you. But with that, if we can begin with Marty Rutherford, the commissioner of Alaska Department of Natural Resources. Welcome to the committee.

**STATEMENT OF MARTY RUTHERFORD, DEPUTY COMMISSIONER, ALASKA DEPARTMENT OF NATURAL RESOURCES, ANCHORAGE, AK**

Ms. RUTHERFORD. Thank you. Good afternoon, Madam Chairman, and members of the committee.

On behalf of the State of Alaska, I thank you for holding this hearing on two bills that are very important for Alaskans. As you said, my name is Marty Rutherford. I am the deputy commissioner for the Alaska Department of Natural Resources. The Alaska Department of Natural Resources manages the lands and resources owned by the State of Alaska.

On behalf of the State, I offer the following comments in support of two bills before the committee: S. 1421, the Alaska Native Allotment Subdivision Act, and S. 1466, the Alaska Land Transfer Acceleration Act.

I would like to begin with S. 1466. This bill, along with appropriate funding, will speed up land transfers to thousands of individual Alaska Native allottees, to Alaska Native corporations, and to the State of Alaska and in this way provides a tremendous opportunity for Alaska. I would like to take a moment to describe the problem this bill helps solve and why it is important to Alaska.

This is our promised land. As Senator Stevens said, during debate about State's Statehood, Alaska was given a large land entitlement because it was through the ownership and development of these lands that the new State would gain the revenues needed to sustain itself as a State. That farsighted prediction has proven correct. In Alaska, the State and native lands provide the revenues for governing Alaska and development of these lands creates jobs and income for Alaskans.

Unfortunately, another Statehood-era prediction has also come true. During the Statehood debate, then Senator Robertson of Virginia called these lands the "promised land," and 45 years later, the land remains in part a promise. Let me explain.

The land granted to the State through the Statehood Act and other Federal laws will result in the eventual transfer of nearly 105 million acres to the State. To date, 90 million acres have been transferred and only 45 million acres have been surveyed and patented. These lands have provided Alaska with land for the largest State park system in the Nation, provided us with the rich oil fields of the North Slope, and have enabled the State to transfer hundreds of thousands of acres into private ownership through State land sale programs.

While these land transfers have benefitted our State, the Federal Government has yet to transfer over 23 million acres promised the State and Alaska Native corporations, an area that is nearly the size of the State of Virginia. In addition, much of the land transferred to date has not been surveyed and the Federal Government needs to survey and issue patent to over 90 million acres, an area nearly as large as the entire State of California.

Alaskans, including individual Alaska Native allottees, the native corporations, and the citizens of the State, again as Senator Stevens had indicated, we have waited too long for these land transfers to be completed. For example, the deadline for filing most native allotments was 33 years ago. Yet, thousands of allottees are still waiting for final approval of their allotments. Some of these applications date back to the late 1800's. Similarly, 33 years after the passage of the Alaska Native Claims Settlement Act, ANCSA, the Federal law that was to resolve the aboriginal land claims in Alaska, the native corporations still await transfer of almost 10 million acres and survey and patent to many million more acres.

Finally, the State was promised over 105 million acres at Statehood in 1959. Yet, we still await the transfer of 15 million acres and the survey and patent of nearly 60 million acres. Land transfers during much of the past decade have averaged only 50,000 acres per year, although that rate has significantly increased recently. However, at that average rate, it would take 300 years to complete land transfers to the State. Again, we cannot wait that long.

Failure to transfer the remaining entitlement to these groups places a significant impediment on the use and development of the lands. Clearly, allottees cannot use land they do not yet own. In addition, the entitlement remaining for the State and native corporations has had a chilling effect on development in some areas of the State. Secure land title is a fundamental prerequisite to use and development of the land. Confusion about the eventual owner puts any significant exploration or investment on hold until the ownership is established.

This legislation has the goal of largely completing these land transfers by the year 2009, which would be the 50th anniversary of Alaska Statehood. This legislation improves land transfer procedures and rules. It does not grant any new entitlements. It does not grant the State any land that we would not otherwise receive. Rather, this legislation removes barriers to the conveyance process and creates some new ways to solve some very old problems.

Those of us in State government who closely watch the conveyance process are concerned that the present process will never resolve the remaining entitlement. I say this absolutely not to disparage the good work of the Bureau of Land Management employees nor the best intentions of the Department of the Interior. Rather, the interactions of entitlements for allottees, the ANCSA corporations, and the State, and with lingering, outdated public land orders has resulted in a system that cannot untangle this complex web in a timely or reasonable way.

S. 1466 is a long and complex bill. It is complicated because the land conveyance process is inherently complicated. Since the time the original bill was introduced, we as the State have participated in discussions with the Bureau of Land Management and other interested parties regarding changes to the bill. We believe that the proposed amendments will address many of the concerns people have identified, and we look forward to working with the committee as it considers revisions to the bill.

The State of Alaska strongly supports S. 1466 because it provides a system that allows, with the complement of appropriate funding,

a new and comprehensive way of accomplishing conveyances that will fulfill the promises made to Alaskans decades ago.

If would grant me just one additional moment, I would like to briefly turn my attention to the other Alaska bill before the subcommittee today.

The State also supports S. 1421, the Alaska Native Allotment Subdivision Act. This legislation allows individuals to legally subdivide native allotments. The need for this legislation surfaced when various native allottees attempted to subdivide their land under Alaska's municipal and State law. We understand that their ability to follow municipal and State law has been called into question under Federal law and puts a cloud on the legality of those subdivisions. Allowing native allottees to subdivide their land according to State and municipal law, when they wish to do so, is an important objective and one the State fully supports.

In closing, I would just like to say again that the State of Alaska supports these two pieces of legislation under consideration by the subcommittee and we thank you for providing Alaskans the opportunity to speak to you today.

Senator MURKOWSKI. Thank you. I appreciate this, Ms. Rutherford.

Let us next go to Mr. Edward Thomas, the president of the Central Council Tlingit and Haida Indian Tribes of Alaska from Juneau. Welcome.

**STATEMENT OF EDWARD K. THOMAS, PRESIDENT, CENTRAL COUNCIL TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA, JUNEAU, AK**

Mr. THOMAS. Thank you, Madam Chairman or Chairwoman. On behalf of the Alaska Native community, I thank you very much for the opportunity to provide my testimony here today. I also want to thank you and commend you on your leadership of not only bringing forth this very difficult issue but also coming to Alaska and hearing the people speak. That means a lot to us. So we commend you for that.

Let me make it very clear that from the native point of view we almost unanimously support the goal of this bill. But we also need to make it very clear we want to do so without diminishing the rights of those native allotment applicants.

Secondly, I want to make it clear that I am not here to do what is termed as government-bash. That really is not the intent. We want to work as cooperatively as possible with all parties to make sure that we can achieve our goal in a timely manner.

I must point out that while we are identifying the problems, however, we need to point out there are some weaknesses in the agency that need to be addressed and that is covered in the testimony. There are weaknesses in the language proposed. We provide that in our written testimony. I hope that you will take the time to read that. We are very explicit and detailed in the written testimony so that there can be clarity is what the intent is in proposing such language.

I need to also point out that many of the delays are not because there are applicants there or there are problems or mixups in the law or the applicants are not cooperating. I need to point out that

much of the delays are because the system is broken in the agency, that there are a lot of delays on people's desks that need to be dealt with.

Just to give you an example, when the Native Claims Settlement Act was passed, just about the same time, the trans-Alaska pipeline was approved to be built. All the lands for the right-of-way and the connecting lands needed for building the pipeline had all been certified. The same amount of time since then and now, yet we still have less than a third of our lands being certified. So it appears to me that there is either a conflict in principle or an absence of will to get those things off somebody's table.

Furthermore, in the Bureau of Indian Affairs, it has been well known for a long time that there are more resources needed, but yet the BIA year after year does not apply for the resources necessary either from the President or from the agency to get the job done.

We also are aware that there are a number of protests by the State over many of the applicants. We feel that it really does not serve much purpose other than just further delaying the processing of these applications. The applications are being processed in accordance with law and regulations and they should be allowed to do so.

In my written testimony, I point out that we feel that the goal of getting these native allotments processed by 2009 are nearly impossible unless you embrace some of our recommendations. We also feel that the proposed legislation does compromise the rights of many of the people who are applicants, and we provide some ways in which to both protect the rights of those applicants and to expedite the application process.

I think that it is important to point out that when you spoke about the appeals process earlier, that we very much agree with what your points were in bringing those forward, that as we try to expedite the process, oftentimes the rights of the people are compromised in the interest of moving forward. I believe that the two can work hand in hand if the deadlines were not just way off in 2009, but to break it into smaller increments. The deadlines, for example, to have a hearing would be identified within the process of the application.

Another issue that is brought forth is the issue of the judge. The administrative law judge comes to Alaska and deals with about 15 cases and then moves on. This is something that should really be going on throughout the year.

I am going to conclude by pointing out that there are four major parts of the written testimony that I hope that you will be able to categorize. Number one is the right to amend applications. I will not go into detail. It is covered in section 305. The right to reinstate closed allotment applications. Section 305 again. The right to reconstruct lost applications. As you are well aware, there are more than 500 applications that were lost between 1970 and 1971. They are logged in but they cannot find them and they really should be allowed to be reintroduced by the applicants. And then finally, we go into a lot of detail on the right for a fair hearing on appeal.

Once again, thank you very much for this opportunity and I commend you once again for your leadership in bringing this very important issue forward. Thank you. Gunalcheech howa.

[The prepared statement of Mr. Thomas follows:]

CENTRAL COUNCIL TLINGIT & HAIDA INDIAN TRIBES OF ALASKA,  
OFFICE OF THE PRESIDENT,  
Juneau, AK, February 9, 2004.

Hon. LARRY E. CRAIG,  
*Subcommittee on Public Lands and Forests, Dirksen Office Building, Washington, DC.*

DEAR SENATOR CRAIG: It is my privilege to submit to you my testimony and the technical amendments\* to S. 1466 that were drafted by the S. 1466 Working Group under the auspices of the Central Council of Tlingit and Haida. The working group is representative of 150 federally recognized Tribal governments in Alaska and includes the Sitka Tribe, Yakutat Tlingit Tribe, Chilkat Indian Village, Inupiat Community of the Arctic North Slope, Association of Village Council Presidents, Tanana Chiefs Conference, Alaska Realty Consortium, Manillaq Association, Bristol Bay Native Association, Kawerak, Inc. and the Central Council of Tlingit and Haida. Also involved in the working group is the Alaska Federation of Natives, Alaska Intertribal Council and Alaska Legal Services Corporation.

The amendments address three basic concerns. First, the amendments correct the flaws in the existing legislation that we believe violate the constitutional and statutory rights of Native allotment applicants. Second, the amendments allow the Tribes to assume many of the allotment responsibilities that BLM and BIA have failed to carry out in a timely manner. Third, the amendments allow the unfairness of past practices to be corrected by allowing two groups the opportunity to obtain allotments.

I would be happy to answer any questions that you may have. Again, we appreciate the opportunity to submit testimony amendments to S. 1466.

Sincerely,

EDWARD K. THOMAS,  
*President.*

PREPARED STATEMENT OF EDWARD K. THOMAS, PRESIDENT, CENTRAL COUNCIL  
TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA, JUNEAU, AK

#### INTRODUCTION

Mr. Chairman and Honorable members of the Senate Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources:

My name is Edward Thomas. I am the elected President of the Central Council of the Tlingit and Haida Indian Tribes of Alaska, a federally recognized Indian Tribe with 24,000 Tribal citizens. Southeast Alaska is the ancestral homelands of the Tlingit and Haida people. In addition to speaking on behalf of the Central Council today, I am also here to speak on behalf of a Working Group, which I formed in August 2003 to specifically address S. 1466. That group represents about 190 Tribal entities.

I am honored to be here today to speak to this Committee about S. 1466 and its adverse impacts on the Native people of Alaska. I will first summarize the land transfer problems that S. 1466 attempts to address. Second, I will identify the provisions of S. 1466 that adversely impact Native allotments. Third, I will summarize and discuss the technical amendments to S. 1466 I am submitting to the Committee today.

#### BACKGROUND OF S. 1466

S. 1466 does not change all of the reasons why the transfer of land in Alaska has taken so long. Thus, it is certain that S. 1466 will not bring about the finalization of the transfers of land to Native allotment applicants, Native Corporations, and the State of Alaska by the year 2009. Instead, S. 1466 offers false hopes that the transfer of land will be completed in 2009. That goal is impossible under S. 1466. However, the goal is possible if the Committee adopts the technical amendments to S. 1466 that I submit to you today. Before I discuss those amendments, I want to explain what is wrong with S. 1466.

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\*The technical amendments have been retained in subcommittee files.

The overall goal of S. 1466 is to ensure that the State of Alaska and Native Corporations obtain patents to land that each has selected. In order for that to occur, Bureau of Land Management (BLM) must complete and finalize all pending Native allotments. In other words, pending Native allotments are holding up the finalization of land transfers to the State and Corporations. To remedy that problem, S. 1466 streamlines the government's processing of allotment applications but in doing so it eliminates existing property rights of Native allotment applicants. This is justified according to a BLM Memo,<sup>1</sup> because Native allotment applicants (or heirs) are the cause of the delays in finalizing Native allotments. It is not true that Native allotment applicants (or heirs) are the cause of the delay. Instead, the cause is the inefficient and lengthy processes used by BLM, the Office of Hearings and Appeals (OHA), and the Interior Board of Land Appeals (IBLA).

The length of time BLM takes to process allotment applications is caused by numerous factors including:

Many approved applications sit idle for years awaiting surveys.

- Many applications sit idle for years awaiting a hearing because allotment hearings are routinely only conducted in the summer months thereby severely limiting the total number of allotment hearings scheduled each year. Further, there were only a few allotment hearings in the summer of 2003 because the Office of Hearings and Appeals ran out of money. By the time hearings finally occur, many applicants and their witnesses are deceased. Many applications sit idle for years waiting to be processed after favorable hearing decisions or favorable appeal decisions. Only minor ministerial tasks need to be done in these cases.
- Many applications sit idle for years waiting for an appeal decision from the IBLA. Five years is the average length of time it takes the IBLA to issue a decision.
- Many applications could now be final under the legislative approval provisions of ANILCA but the State of Alaska protested over 6,000 allotments, thus adding years to the process.

It is important to understand that the delay in processing Native allotment applications has hurt allotment applicants far more than the delay has hurt either the State or Native Corporations. This is true because in many old cases, the applicants and their witnesses have died during the thirty and more years it has taken the government to process the applications which resulted in the rejection of allotments. We can expect this injustice to only increase as time goes on. I am here today to speak for all the applicants and their heirs who continue to wait for the government to make good on its promise to convey title to land for their allotments.

#### OVERVIEW OF NATIVE ALLOTMENTS IN ALASKA

Before I discuss the reasons why I oppose specific provisions of S. 1466, a brief discussion of the Alaska Native Allotment Act, may be helpful. In 1906, Congress enacted the Alaska Native Allotment Act because Native people in Alaska were starving to death due to the encroachment of lands necessary for subsistence.<sup>2</sup> Prior to 1906, Alaska Natives could not get title to land they used to obtain the necessary resources for food, shelter and clothing. Congress intended that the Secretary would convey allotments to Alaska Native people to preserve their subsistence traditions, not destroy them. Protecting traditional uses of land and resources remains equally important today.

The legislative history of the Allotment Act establishes that prior to the passage of the Act, non-native encroachment on Native lands caused widespread devastation which the federal government failed to prevent even though it had a duty to protect Native use and occupancy.<sup>3</sup> The government's failure resulted in the starvation of Native men, women, and children throughout Alaska. This was such an acute problem that President Roosevelt sent a special investigator to Alaska in 1903 in an attempt to alleviate the suffering and death, caused by the inability of Native people to access and harvest traditional resources.<sup>4</sup>

It must be remembered that by 1903, the Alaskan "gold rush" had been underway for almost ten years. Congress knew that the heavy traffic through Alaska to the goldfields greatly affected the traditional land uses and possessory rights of Alaska's

<sup>1</sup>Memorandum from BLM, Alaska State Director to Assistant Secretary, Land and Minerals Management (May 7, 2003).

<sup>2</sup>*Report on Conditions in Alaska*, by James W. Witten, Special Inspector, General Land Office (1903).

<sup>3</sup>*Pence v. Kleppe*, 529 F.2d 135, 141 (9th Cir. 1976).

<sup>4</sup>*Report*, James W. Witten, at 32-33.



Native people. There was also substantial traffic from the salmon canneries, oil production, copper mining and commercial logging. These were all activities that took a heavy toll on the same resources that provided food, shelter and clothing to Native Alaskans. History tells us that non-native encroachment on their lands caused widespread devastation resulting in the starvation of Native men, women, and children. Congress recognizing its duty to protect the use and occupancy of lands by Native people in Alaska decided it must take action. The action was the Alaska Native Allotment Act that carved out allotments of 160 acres of land so that crucial subsistence activities could continue undisturbed for generation after generation.

Unfortunately, the government agencies responsible for carrying out the allotment program did not agree that conveyance of allotments was necessary. Consequently, in the first fifty-four years of the Alaska Native Allotment Act only 78 allotments were granted, and as of 1970, only 245 allotments had been conveyed to Native people.<sup>5</sup>

The Alaska Native Allotment Act was repealed in 1971 by the passage of the Alaska Native Claims Settlement Act (ANCSA).<sup>6</sup> After 1971 only applications that were then pending were processed. In 1970, the government finally implemented a program to let Alaska Natives know about the opportunity to get title to allotments of land. This program had government employees visiting villages throughout the state helping Alaska Natives to file allotment applications. Because of these efforts, approximately 10,000 allotment applications were filed before the 1971 deadline. However, the delay in finalizing allotments has never been too many applications filed but rather the process used for allotment applications is lengthy and costly.

In 1980, Congress again tried to provide finality to Native allotments by the passage of Section 905, of the Alaska National Interest Lands Conservation Act (ANILCA).<sup>7</sup> Section 905 was designed to remove many of the administrative barriers to obtaining an allotment by authorizing the Secretary of Interior to "legislatively" approve some, but certainly not all, of the pending allotments. Legislative approval eliminated the need for costly and lengthy administrative hearings. The will of Congress was thwarted when the State of Alaska protested more than 6,000 applications as a way to prevent legislative approval.

It is unknown how many allotments have been legislatively approved. Allotments not legislatively approved, require proof that the applicant's use of the land was substantially continuous for more than 5 years, potentially exclusive of others. There are approximately 4,000 pending allotment parcels requiring adjudication today.<sup>8</sup> Many of the pending allotments require hearings on one or more of the following three issues: 1) whether the application was filed on time but later lost by the government; 2) whether the legal description on the application is erroneous and should be amended; and 3) whether the applicant's use of the land meets the legal requirements for obtaining an allotment.

Some of these very old cases in need of hearings are further complicated and could be unfairly denied because many of the applicants and first hand witnesses have died. All applications are now over 30 years old and some much older ranging up to 90 years old.<sup>9</sup>

The age of these claims is far more acute for the applicants or their heirs because in many of the old cases, the applicants and their first hand witnesses are deceased. Many of these old claims require a hearing where the applicants' heirs, many who are the grandchildren of the applicants, must prove by a preponderance of the evidence that the applicant's use of the land was substantially continuous for more than 5 years potentially exclusive of others. One example is the case of Harry McKinley who filed his allotment application in 1909, and died in 1927. Finally, in 2002, over 90 years after Mr. McKinley filed his application and 75 years after he died, the Department scheduled an evidentiary hearing on the issue of Mr. McKinley's use and occupancy. It then took until 2004 for the judge to issue a deci-

<sup>5</sup> DAVID CASE & DAVID VOLUCK, ALASKA NATIVES AND AMERICAN LAWS 110 (2d ed. 2002) (citing) Bureau of Indian Affairs 1956-1993 Annual Caseloads Report, Summary of Native Allotment Numbers (Juneau 1994)).

<sup>6</sup> 43 U.S.C. 1617.

<sup>7</sup> 43 U.S.C. 1634.

<sup>8</sup> There are approximately 2,800 applications, but each application may have up to four parcels. 1.6 is the average number of parcels in an application. *A Report Concerning Open Season for Certain Native Alaska Veterans for Allotments*. Prepared for Congress by the Department of the Interior in Response to Section 106 of Public Law 104-42, p. 6 (June 1997).

<sup>9</sup> See the pending applications of Chetah Ka (A-000438) filed in 1919, Paul Brown (A-000439) filed in 1909; Harry McKinley (A-000441) filed in 1909; Setuck Harry (A-001489) filed in 1911; John Ketch Koostien (A-001499) filed in 1912; James Rudolph (A-001745) filed in 1915; William Jackson (A-001747) filed in 1915; Jack Yaquam (A-001787) filed 1915; Jack Moore (A-002492) filed in 1915; and David Lawrence (A-002494) filed in 1915.

sion which is on appeal to the IBLA where it will likely remain for another 5 years. Mr. McKinley is not an isolated case.

Another example is the case of Setuck Harry who filed his application in 1911 and died in the early 1940's. An evidentiary hearing was held to determine the correct location of the allotment and the decision issued in 2000 was favorable to the heirs and so was the IBLA's 2001 decision. Since that 2001 decision, BLM has accomplished little work; the final approval of that allotment has not yet been issued. In the meantime, the U.S. Forest Service permits fishing camps on this allotment and has even allowed fuel to be stored on that land.

Another example is the case of Luke Thomas who filed his application in 1915. His application was determined to be valid in 1991. Because Mr. Thomas' allotment land was mistakenly conveyed to the State, this is a "title recovery" case which simply means the State must reconvey the land to BLM. Since BLM's 1991 validity decision, there has been no action by the BLM to recover this land except a mere request letter sent to the State in 1992.

Another case is that of Chetah Ka who filed his application in 1911, and died in 1919. On February 8, 2002, the BLM requested an evidentiary hearing to be scheduled on the issue of Mr. Ka's use of the claimed land. It has been 93 years since Mr. Ka filed his application but his heirs have still not been afforded a hearing on Mr. Ka's use of the land.

There are many other similar examples of cases that have been delayed by a process that has failed. There is no one reason that explains the length of time it takes an allotment to be finalized. When compared to homestead claims in Alaska, it is clear the amount of evidence the government requires to prove allotment claims are valid is a major factor in causing the delays because today there are no outstanding homestead claims because the government required minimal proof for those claims.

#### SECTIONS 301, 302, 305 AND 501 ELIMINATE IMPORTANT STATUTORY AND CONSTITUTIONAL RIGHTS OF NATIVE ALLOTMENT APPLICANTS

Sections 301 and 302 allow the government to exercise its discretion to avoid its obligation to recover the land when the allotment is valid and the land was erroneously conveyed. Although, Section 301 allows the State or Corporation to offer the applicant land in a different location from the allotment land, if the applicant does not consent, this Section authorizes the Secretary to survey the land as it is now described in BLM's records. This provision will authorize surveying land that may not correctly describe the allotment land. An unknown number of allotments are incorrectly described in BLM's records. In most cases these errors are the fault of the government, not the fault of the applicant.<sup>10</sup> Further, these sections do not eliminate BLM's lengthy adjudication of allotments because these sections apply only to "valid" allotments. The phrase valid allotment denotes the final determination BLM issues after its adjudication of the applicant's use and occupancy. In hundreds of allotment applications filed over 30 years ago, a final validity decision has still not been made. Thus, Sections 301 and 302 do nothing to speed up BLM's adjudication process.

Section 305 eliminates the existing right of Native allotment applicants to amend an allotment description. Amendments of allotments arose from the recognition by Congress that a significant percentage of allotment applications contained errors that were not the fault of the applicants.<sup>11</sup> In most cases it was the BIA that identified the location of the allotment and provided BLM with many erroneous legal descriptions. Congress intervened with Section 905(c) of ANILCA allowing the correction of erroneous legal descriptions.

The right to amend allotment descriptions under ANILCA is allowed only in very limited situations; it is allowed only in situations where it is proven that the land described in the application is not the land that the applicant originally intended to apply for as the allotment. The purpose of Section 905(c) is to correct mistakes in the allotment applications that the government made when it collected the applications during 1970-1971.

If the right to amend is eliminated as contemplated by S. 1466, some applicants will lose their allotments because they will not be able to prove use and occupancy of land they did not originally intend to apply for. It is also possible that even if they receive land they did not intend to apply for, valuable improvements on the land they did intend to apply for would be lost.

<sup>10</sup>*Mary Olympic v. United States*, 615 F.Supp. 990, 994 (D. Alaska 1985).

<sup>11</sup>S. Rep. No. 413, 96th Cong., 2d Sess. 237-38, reprinted in 1980 U.S. Code Cong. & Ad. News 5070, 5181-82.

Sections 305 (f)(1) and (f)(3) eliminate the right of allotment applicants to reinstate their closed cases. Under current federal court decisions, applicants (or heirs) have the right to get closed allotment cases reinstated if BLM closed the case without an opportunity for a hearing because such a closure was in violation of due process.<sup>12</sup> Before these federal court decisions, allotment applications were routinely rejected and closed whenever it believed there was insufficient evidence to prove the applicant's qualifying use of the land claimed for an allotment. The number of closed cases that should be reopened is unknown but we suspect it is a substantial number.

Eliminating the right to reinstate allotment cases closed in violation of the applicants' due process rights compounds the original violation and will only lead to future litigation. Although, the U.S. Supreme Court has repeatedly held that while Congress has plenary authority over Indian affairs, which would include Native allotment matters, it must comply with guarantees of the U.S. Constitution,<sup>13</sup> such as the due process clause and the just compensation clause.<sup>14</sup> Congress should delete Sections 305 (f)(1) and (f)(3) from S. 1466 and instead, direct BLM to reinstate those unlawfully closed cases.

Section 305(f)(2) severely limits the right of allotment applicants to file reconstructed applications in cases where the government lost the original applications. This problem arose during 1970-71, when the government went to villages in Alaska and filled out by hand numerous allotment applications from information provided by the applicants. These applications were then sent to California where specific legal descriptions were created for each allotment. The applications were typed and sent back to Alaska. This process caused the loss of more than 500 applications. Still today, there are applicants wondering when they will get allotment certificates, not knowing their applications were lost. Under current rulings of the IBLA, applicants (or heirs) have the right to file reconstructed applications where the government lost their original application.

Unfortunately, Section 305 (f)(2) eliminates this right and in addition allows BLM to reject previously filed reconstructed applications unless the BLM's file already contains the information that would meet the long list of evidentiary requirements as set forth in Section 305 (f)(2). This Section effectively creates a new and extremely harsh standard far exceeding the evidence the IBLA now requires to prove the government lost an application.<sup>15</sup> It will be impossible for many applicants to meet this new standard because they will be required to remember details of events surrounding the filing of their applications which occurred over thirty years ago.

Moreover, it likely violates due process to authorize BLM to close cases that do not meet the higher evidentiary standard when notice of the new standard has never been provided to applicants. Even if notice of the new standard was provided, it is likely a due process violation to allow BLM to close such cases without a hearing on the factual issues.

Section 305(f)(3) eliminates the right of allotment applicants to request reinstatement of relinquished allotment land even if the relinquishment is invalid. The right to reinstate an allotment on the grounds that a relinquishment is invalid is addressed in Section 905 of ANILCA.<sup>16</sup> Invalid relinquishments according to the IBLA are those that were unknowing or involuntary.<sup>17</sup> One example of an invalid relinquishment is found in the case of Willie Arkanakyak, an Alaska Native who neither spoke nor read English.<sup>18</sup> Evidence introduced in the hearing established that a BIA employee found Mr. Arkanakyak intoxicated in a bar and caused him to sign a relinquishment of his allotment.

Section 501 creates new procedures for allotment hearings and appeals, sacrificing the right of Native allotment applicants to have fair and impartial hearings and appeals. Further, the new procedures add time and cost to the existing hearings and appeals process. It is also certain that the new procedures will not meet due process.

Currently, applicants (or heirs) have a right to a fair hearing to determine certain factual issues in their allotment cases. The hearings are conducted by impartial ad-

<sup>12</sup> *Pence v. Kleppe*, 529 F.2d 135 (9th Cir. 1976); *Pence v. Andrus*, 586 F.2d 733 (9th Cir. 1978).

<sup>13</sup> *United States v. Sioux Nation of Indians*, 448 U.S. 371, (1980). See also, *Delaware Tribal Business Committee v. Weeks*, 430 U.S. 73, 84 (1977).

<sup>14</sup> See, *Babbitt v. Youpee*, 519 U.S. 234 (1997); *Bolling v. Sharpe*, 347 U.S. 497 (1954); *United States v. Antelope*, 430 U.S. 641 91977; *Hodel v. Irving*, 481 U.S. 704 (1987).

<sup>15</sup> *Alice Brean v. United States*, 159 IBLA 310 (2003) (holding that the IBLA will set aside BLM's rejection of a reconstructed allotment if the Board decides there is a question of fact whether the application was timely filed and BLM has not provided the applicant with a hearing required by the due process clause).

<sup>16</sup> 43 U.S.C. 1634(a)(6).

<sup>17</sup> *Matilda Johnson*, 129 IBLA 82 (1994).

<sup>18</sup> *Estate of Willie Arkanakyak*, IBLA 93-113 (March 8, 2001).

ministrative law judges under rules proscribed by federal regulations. These hearings meet due process guarantees.<sup>19</sup> Unless the new hearing procedures are identical to the existing procedures, it is likely that due process requirements will not be met.

Applicants presently have a right to appeal agency decisions to the IBLA under rules proscribed by federal regulations. Unless the appeals process contemplated by Section 501 is identical to the existing appeals process, it is unlikely that due process will be met.

The hearings and appeals process are unquestionably slow causing years to the finalization of many allotment cases. However, that does not justify eliminating the rights of Native allotment applicants to fair and impartial hearings and appeals. Instead, this Committee should examine why OHA and IBLA have failed to hold hearings and issue decisions on a timely basis. Lack of resources is one major reason for this failure. For example, the OHA generally schedules allotment hearings only in the summer months which drastically reduce the total number of hearings that occur each year. Obviously, scheduling year-round hearings would solve part of the problem. In addition, although only 15 hearings were scheduled for the summer of 2003, OHA cancelled 10 because it ran out of money.

#### TECHNICAL AMENDMENTS TO S. 1466

The proposed amendments to S. 1466 will afford Native allotment applicants due process and will facilitate the transfer of land selected by the State and Native Corporations. Numerous provisions in S. 1466 add substantial time and costs to the finalization of land transfers, contrary to the specific purpose of this legislation. I am certain that the goal of finalizing the transfer of land in Alaska by 2009 will never be reached if S. 1466 is enacted as it is now written. I offer this Committee technical amendments to S. 1466 that assures the 2009 goal will be reached and the rights of Native people in Alaska will be protected.

#### *Summary of Technical Amendments*

**Legislative Approval:** Section 305 is amended to provide legislative approval of all pending applications with mediation required for settlements where the State or Corporations have a valid interest in the land. This provision will substantially reduce the delays that are inherent in BLM's existing process.

**Title Recovery:** Section 302 is amended to substantially shorten the title recovery process by providing for legislative approval of all pending applications where the land has been erroneously conveyed to the State or Native Corporation. In hundreds of allotment cases, the title recovery process has taken over 30 years and is still not finalized. Without legislative approval of these cases, it will be impossible to finalize the hundreds of pending title recovery allotment cases by 2009. Section 302 also makes it clear that if alternative land is offered to the applicant by the State or Corporation and the applicant refuses it, the BLM is not authorized to force the applicant to accept but instead, must carry out its duty to recover the land in accordance with the decision in *Aguilar v. United States*.<sup>20</sup>

**Reconstructed/Reinstated/Amended Applications:** Section 310 is amended to reaffirm the existing right to reconstruct lost applications and to reinstate improperly closed applications and provides a fair timeline for the finalization of cases. Section 310 requires BLM to identify all allotment applications that were or may have been improperly closed and to notify each applicant. The applicants will have three years after such notice to request reconstruction, reinstatement or amendment of their allotment applications. BLM's report identifying improperly closed allotment cases with subsequent notice to applicants and a 3-year deadline to request reinstatement will substantially reduce the likelihood that the protected property rights of Alaska Natives will be sacrificed in a rush to finalize the land transfers to the State and Corporations.

**Hearings and Appeals Process:** Section 501 is amended to provide two options that will ensure that allotment hearings and appeals will be completed in a fair and timely manner. The first option authorizes compacting/contracting allotment hearings and appeals to the Tribes in Alaska. The second option increases the resources of OHA making it possible for the opening of an office in Alaska where administrative law judges would be permanently assigned to conduct year round allotment and probate hearings for cases where a Tribe elects not to provide such service.

**Vietnam Veterans Allotments:** Section 307 adds a new section to S. 1466 which amends 43 U.S.C. 1629g allowing allotment applications to be filed for 160 acres of

<sup>19</sup> *Pence v. Andrus*, 586 F.2d 733 (9th Cir. 1978).

<sup>20</sup> 474 F.Supp. 840 (D. Alaska 1979) (holding that BLM had a trust obligation to recover allotment land it had erroneously conveyed to the State of Alaska).

vacant federal land by Alaska Natives veterans (or heirs) who honorably served during the Vietnam era.

**Southeast Alaska Allotments:** Section 308 adds a new section to S. 1466 which allows reinstatement of applications that were closed under the *Shields*<sup>21</sup> case adjusting the unfair balance in the geographic distribution of allotments because the land in all of Southeast Alaska was withdrawn by 1909.

**Compacting or Contracting the Department's Responsibilities to Tribes:** Section 309 adds a new section to S. 1466 which allows Tribes to assume many of the allotment responsibilities of the Department of the Interior including the adjudication, hearings, and appeals of allotments and probate work. This provision will cut years from the current processing of allotments.

#### ANALYSIS OF TECHNICAL AMENDMENTS TO S. 1466

The amendments to S. 1466 will protect the rights that Native allotment applicants currently enjoy under due process safeguards, administrative and federal case law, ANILCA, and the Alaska Native Allotment Act. The amendments will also ensure that Congress meets its trust responsibility to Alaska Native allotment applicants.

**Legislative Approval:** Legislative approval for all pending allotments including those allotments reinstated under the technical amendments will greatly reduce the time it takes to now finalize allotments. Without legislative approval, it will be impossible for allotments and other land transfers to be finalized by 2009. Although, the legislative approval provisions under ANILCA<sup>22</sup> were intended to achieve this exact result, it failed to do so because the state exercised its veto power in at least 60 percent of the allotment applications, forcing hundreds of cases into BLM's lengthy adjudication process. The allotments that have been legislatively approved prove that this procedure saves time and money. The finalization of land transfers will not happen by 2009 without the expansion of legislative approval because it is simply impossible for the Department to adjudicate and hold hearings for the current number of pending applications.

**Title Recovery:** Amending Section 301 reduces delays. This amendment will eliminate the obstacles to the finalization of land transfers in title recovery cases. This is important because about one-third of the remaining allotment cases are title recovery cases. Title recovery cases are those where the allotment lands were erroneously conveyed by BLM to the State or Native Corporations. In these cases, BLM first determines if the allotment is valid, which means BLM determines if the case file contains sufficient evidence of the applicant's use of the claimed land. If so, BLM sends a letter requesting the land be reconveyed but in many cases, years have elapsed since the letters requesting reconveyance were sent and no action has been taken since. Moreover, years are added to title recovery cases because many cases require hearings under existing law.

- **Recovery of land required:** The amendments reflect the government's obligation to recover the land when the allotment is valid and the land was erroneously conveyed.<sup>23</sup> To provide additional discretion to not recover allotment lands will only create more obstacles because even if the government exercises its Section 301 discretion and fails to recover the allotment land, a cloud will remain on the title. In addition, an allotment applicant could still initiate litigation to recover title.
- **Valid existing rights:** Currently, allotments that are legislatively approved are subject to valid existing rights if such rights were initiated prior to the commencement of use of the allotment. Allotments are not subject to existing rights if the existing rights were initiated after use of the allotment began. On the other hand, such rights are routinely reserved in Settlement Agreements that allotment applicants must sign before the State or Corporations will agree to reconvey the land. There are many unreconveyed allotment cases that have sat idle because of the interests in the allotment claimed by the State or Corporations. Section 301 does nothing to eliminate the current stand off.
- **Settlement Agreements:** Before the State or Corporations agree to reconvey allotment land, it requires applicants to sign settlement agreements. Many of these agreements unfairly reserve interests in the allotment. These reserved interests were not initiated first and therefore are not interests that could legally be justified. In some cases, the reconveyance documents reserve even more interests to the State or Corporations. The State interprets Title 38 of the Alaska

<sup>21</sup> *Shields v. United States*, 698 F.2d 987 (9th Cir. 1983).

<sup>22</sup> 43 U.S.C. Section 1634(a)(1)(A).

<sup>23</sup> See, *Aguiar v. United States*, 474 F.Supp. 840 (D. Alaska 1979).

Revised Statutes as requiring reservations of certain interests even when those interests are legally unjustified under federal law.

- Legislative approval: Legislative approval will remove many of the delaying obstacles from the title recovery cases. There are numerous allotment applications which now require lengthy and costly adjudication only because ANILCA 43 U.S.C. § 1634 (a)(4) requires it for lands conveyed to the State and lands selected or tentatively approved to the State or Corporations. Excluding title recovery cases from the legislative approval provisions of ANILCA has been ineffective, causing only delay, inaction, and even defiance in some cases where the State and Corporations have overtly refused to reconvey.
- Alternative dispute resolution (ADR): Continuing to require lengthy allotment hearings will not allow the goal of finalization for land transfer to be reached for many years. However, if ADR was part of the title recovery process prior to legislative approval, in many cases the valid interests of the State or Corporation could be settled. ADR could eliminate time and costs in title recovery cases.
- Direct conveyance from the Corporation to the applicant: Allowing Native Corporations to directly reconvey the allotment land to the applicant will save time and money. It will also allow the Corporation and the applicant more flexibility in resolving land conflicts because the amendment allows the applicant to accept substituted land and/or cash compensation in lieu of the allotment.

**Reinstatement of Unlawfully Closed Applications:** The amendment provides for reinstatement of unlawfully closed cases in a timely and fair manner. By federal court decision, a due process hearing on factual issues is required before an allotment case can be closed.<sup>24</sup> Yet there are cases that were closed without a hearing and remain closed today. Those cases must be reinstated. Further, unlawfully closed cases also include cases where the land was relinquished but the relinquishment was not knowing or voluntary. In other words, some relinquishments occurred under questionable circumstances. There are other cases where BIA and others made errors in filling out legal descriptions which had the effect of reducing the total acreage of an allotment. Questionable cases must be reinstated even if only for the purpose of investigation. However, BLM's policy as stated in its manual is that it will not reinstate an unlawfully closed application on its own initiative but instead requires a request from the applicant.<sup>25</sup> Therefore, the first step in fixing the reinstatement problem is a mandate to BLM to provide a report of allotment applications that were or may have been unlawfully closed.

The amendment requires BLM to provide to the public within 6 months from the enactment of S. 1466, a list of all allotment cases that were closed without notice and hearing. The amendment provides a 3-year deadline from the date of BLM's published list of closed cases to file with BLM a request for reinstatement. Once the three year deadline lapses, BLM will have a finite number of cases to accept or deny reinstatement and if other provisions of S. 1466 are amended these reinstated cases should be final by 2009 or before.

**Reconstruction of Lost Applications:** The amendment to Section 305 allows the reconstruction of lost applications within a time frame that ensures the 2009 goal will be met. It is obvious that land transfers may never be final if the right to reconstruct lost applications does not end, but it is unfair to abruptly end the reconstruction of lost applications without any prior notice to allotment applicants who may not know that their applications were lost. Thus, sufficient time with notice must be given to allow Alaska Natives who may have lost applications needing reconstruction. The amendment provides a 3-year deadline for submitting reconstructed applications. BLM is required to provide notice of the 3-year deadline to the Bureau of Indian Affairs, Tribes, and others serving Alaska Natives. The 3-year deadline begins to run from the date BLM first provides notice of the 3-year deadline.

**Hearings and Appeals:** Section 501 is amended to resolve the problem of the delays at the hearing and appeal levels. The amendment also prevents unnecessary duplication and excessive costs that now occur and are certain to occur in the future under the new hearing and appeal procedures contemplated by S. 1466.

Although the current hearings and appeals system adds years to many allotment cases, the resolution of this problem should not unfairly deprive allotment applicants' access to impartial hearings and appeals decided by an appeals Board that has the expertise to decide allotment issues such as the IBLA. It could take a new appeals body years to gain the expertise necessary to issue competent appeal decisions.

<sup>24</sup> See, *Pence v. Kleppe*, 529 F.2d 135 (9th Cir. 1976).

<sup>25</sup> BLM's Native Allotment Manual, Section 7(a)(2) of Chapter 11(1991).

Many Tribes in Alaska are capable and eager to assume the Department's allotment hearings and appeals responsibility by compacting or contracting in accordance with the Indian Education and Self-Determination Act of 1975.<sup>26</sup> The amendment provides for compacting/contracting that would distribute among numerous Tribes the hearings and appeals burden that the Department has failed to meet. Moreover, the hearings would take place year round and be conducted by Tribal Judges who already have knowledge of the allotment applicant's culture and subsistence practices. In the compacts/contracts, participating Tribes could agree to adopt as Tribal law the federal regulations governing hearings and appeals.

The current resources of the Department's Office of Hearings and Appeals including the IBLA must be increased and the work expanded. The amendment provides that the resources of OHA would be increased in order to open an office in Alaska where administrative law judges would be permanently assigned and conduct year round allotment and probate hearings for cases where Tribes elect not to provide such service. In addition additional funding is appropriated to the IBLA with a directive that it be used to increase its staff for allotment cases where Tribes elect not to provide such service.

Compacting or Contracting the Department's Responsibilities to Tribes: The amendment allows Tribes to assume many of the allotment responsibilities of the Department including BLM's adjudication process, hearings, appeals and probate work. Contracting or compacting such responsibilities to the Tribes will be consistent with aims of the Self Determination Act and the trust responsibilities of Congress and the Department. Having the Tribes assume the work will also remove many of the delays to the finalization of land transfers because the burden of allotment work will be distributed among many Tribal entities. The Department of the Interior has had over thirty years to finalize allotments as that work is not even close to completion. It is time to give the Tribes the opportunity to do so.

Amending the Vietnam Veterans Allotment Act: 43 U.S.C. § 1629g is amended to provide that Alaska Natives who honorably served during the Vietnam era be eligible for allotments of 160 acres of vacant federal land. The goal of this amendment is to help make it possible for all Alaska Natives who honorably served in the military during the Vietnam War to receive allotments of land in Alaska. The numerous restrictions in the current Act have defeated many of the applications filed and even discouraged many from applying. For example, as of December 1, 2003, BLM has rejected about 47 percent of the applications filed under the Veterans Allotment Act.<sup>27</sup>

There are three major reasons why the current Veterans Allotment Act needs to be amended. First, is the lack of federal land that is available for veteran allotments; existing law severely limits what type of land can be available for allotments. Presently, land available for veteran allotments must be:

- non-mineral, without gas, coal, or oil,
- not valuable for minerals, sand or gravel,
- without campsites,
- not selected by the State of Alaska or a Native Corporation, not designated as wilderness,
- not acquired federal lands,
- not contain a building or structure,
- not withdrawn or reserved for national defense,
- not a National Forest,
- not BLM land with conservation system unit sites, (unless the manager consents),
- not land claimed for mining,
- not homesites, or trade and manufacturing sites or headquarters site,
- not a reindeer site, and
- not a cemetery site.

Further, these restrictions make it impossible for veterans in Southeast Alaska to apply because as shown above, land in a national forest is not available to veterans and most of Southeast Alaska is the Tongass National Forest. This restriction prevents many deserving veterans in southeast Alaska from obtaining allotments. The amendment makes vacant federal land available for veteran allotments.

Second, the current law does not allow for the legislative approval of veteran allotment applications. The amendment provides legislative approval instead of the

<sup>26</sup> Pub. L. No. 93-638, 25 U.S.C. § 450 et. seq.

<sup>27</sup> Written communication from John M. Toms, Jr., BLM's Native Veteran Allotment Coordinator, to Carol Yeatman, Supervising Attorney, Alaska Legal Services Corporation, Native Allotment Program, dated December 1, 2003.

use and occupancy requirements veterans must now meet. This provision is similar to the legislative approval provision Congress made available to applicants of allotments who applied under the Alaska Native Allotment Act. Legislative approval will save time and money because it will eliminate the costly and lengthy administrative adjudication of the applicant's use and occupancy.

The third reason the law needs to be changed is that current law is unfair to many deserving veterans that do not qualify even though they honorably served their country during the Vietnam era. Many Alaska Native veterans who served during the Vietnam era do not qualify for an allotment under the military service time restrictions in the current law. Only veterans who served from January 1, 1969 to December 31, 1971 are now eligible to apply for an allotment. However, the Vietnam era covered a much longer time span. The "Vietnam era" is legally defined as beginning August 5, 1964 and ending May 7, 1975. Veterans that served during the "Vietnam era" from August 5, 1964 to December 31, 1968, and from January 1, 1972 to May 7, 1975 are excluded from getting an allotment under current law. There are approximately 1,700 Alaska Native Vietnam veterans that will get a chance to apply for an allotment if this provision is enacted into law. Those 1,700 veterans are now excluded simply because they bravely served their country a little too early or a little too late.

Reinstatement of Allotments Closed Under the Shields Decision: The amendment provides for reinstatement of applications that were closed under the decision in *Shields v. United States*<sup>28</sup> by allowing ancestral use of certain allotments to meet the use and occupancy requirements. Although this provision expands the current reinstatement policy of the Department, this amendment provides basic justice. Because most of the land throughout Southeast Alaska was withdrawn by 1909 and the federal government did not inform Native people about the Allotment Act, few Alaska Natives in Southeast Alaska received allotments. Reinstatement of the applications rejected under the *Shields* decision adjusts this unfair distribution of land.

The *Shields* decision answered the question of whether Congress intended to require allotment applicants to prove they personally "used" the land claimed in cases where the land had been withdrawn for the Tongass National Forest before the applicant's birth or if proof that the applicant's ancestors used the land was sufficient. The argument that ancestral use met the "use" requirement was valid because the word "use" was not defined in the Allotment Act or in its legislative history. Unfortunately when a term or word used in a federal statute is not defined by Congress, the courts allow the agencies to interpret the word. That is exactly what happened with the word "use." The Department of the Interior interpreted the word "use" to mean personal rather than ancestral use and the courts deferred to that interpretation. This amendment will not change the language of the Allotment Act but instead will allow Congress to define "use" in a manner that merely differs from the Department of the Interior's definition.

#### CLOSING

Congress enacted the Alaska Native Allotment Act in 1906 so that Alaska Natives would obtain title to land and resources that had fed, clothed and sheltered them for thousands of years. Many Alaska Natives still wait for that promised title. I urge this Committee to amend S. 1466 and in doing so, to protect the rights of Native allotment applicants while eliminating many of the factors that now delay finalizing allotment cases.

Senator MURKOWSKI. Thank you, Mr. Thomas. We appreciate you being here, taking the time to join us, and also for your very specific suggestions. I think they are very helpful. We have gone through your testimony and when we have an opportunity for the questions, you will see that some of our questions are directly related to those written comments. So thank you.

Mr. THOMAS. Thank you.

Senator MURKOWSKI. Mr. Mery, joining us as the senior vice President, Lands and Natural Resources from Doyon, Limited in Fairbanks.

<sup>28</sup> 698 F.2d 987 (9th Cir. 1983).



**STATEMENT OF JAMES MERY, SENIOR VICE PRESIDENT FOR  
LANDS AND NATURAL RESOURCES, DOYON, LIMITED, FAIR-  
BANKS, AK**

Mr. MERY. Good afternoon. Thank you for the opportunity to appear before you today and provide the views of Doyon, Limited on S. 1466, the Alaska Land Transfer Acceleration Act.

My name is Jim Mery. I am the vice president for Lands and Natural Resources at Doyon in Fairbanks. Doyon is one of 12 regional corporations established by the Alaska Native Claims Settlement Act in 1971. We have over 14,000 shareholders. Our land entitlement under ANCSA is about 12.5 million acres and it is the largest of all of the 12 regional corporations.

Some 23 years later after the passage of ANCSA, millions of acres still are not conveyed to Doyon. In fact, in the last 10 years, only about 150,000 new acres have been conveyed. This is really not to put any blame on the BLM as such. It is just that the way the process is designed today, it is broken. It needs to be fixed. This is a major reason why we support S. 1466 with certain improvements.

S. 1466 is a comprehensive approach to solve major technical and policy issues that negatively affect implementation of the Alaska Native Claims Settlement Act and the Alaska Statehood Act. S. 1466 provides the needed framework and Federal flexibility to resolve remaining land conveyance matters.

I want to thank you, Senator Murkowski, your staff, a lot of people in the Bureau of Land Management and the Interior Department for pushing this matter forward. As Mr. Thomas pointed out, it has taken an awful lot of work and determination, energy, creativity I think to come up with some of these solutions. We especially appreciate the work that has been done subsequent to introduction of the bill last summer. I think a lot of improvements have been made, a lot of technical things. When you rolled out what we were trying to accomplish and started thinking about them, some of the timing issues needed to be changed a little bit, and the governmental folks have been very helpful and have come up with a lot of good ideas. We certainly hope that these improvements will work their way into the bill in the near term.

I guess I want to point out that ANCSA land ownership and solving some of our problems is really not a native-only issue. It clearly affects the State of Alaska and you have heard some of those comments in the past. Final land selections really will be, in part, determined by what native corporations get. Many of their selections are also our selections.

At the same time, you move to the refuges and the parks and the Federal properties in the State. There is a lot of uncertainty about wetlands that those people will, indeed, manage ultimately because of the vast selections and inholdings that native corporations have. And sorting all of that I think will be of benefit to the management of the conservation units as well.

A few provisions I will highlight very quickly. Underselected native corporations. Several creative ways that I think that that issue can be solved, including the elimination of difficult to manage Federal inholdings that really are quite close to some of these villages that are underselected. We have got decades-old land withdrawals

that need to be revoked that serve no valid purpose today from our point of view. They foreclose possible development of Federal land and diminish similar opportunities on adjacent native lands.

The bill also sets a calendar to plan and establish final conveyance priorities. Now, this is going to be difficult to meet by both the Government and by the native corporations. It is a lot of work to be done, but we think it is achievable. Obviously, there is a lot of funding that is going to have to come with this to help the Government do the things that they want to do to be done in the time frames that they have set out in the bill, but we do think it is achievable.

Finally, I just want to make a quick couple of comments about some of the native allotment issues that are in S. 1466. Finality of these longstanding land claims is also needed for a number of reasons. First and foremost, it is the right thing to do for the individual applicants and their families. Many of these allottees have passed on since their applications were made. And because so many of the pending allotments do involve lands that are selected by the native corporations and the State of Alaska, again clarity is needed.

I know I am running out of time, but a couple of other comments. Funding is needed to process the pending applications. There are a couple of thousand that are out there. As Mr. Thomas pointed out very clearly, they are just not moving through the system the way they should.

Then in the bill itself on their deadlines regarding reinstated, reconstructed allotment applications, the timing on that we just think is inadequate. I know there is some discussion about extending some of the deadlines, and we think that is very important.

But in closing I guess I want to say that S. 1466 does provide an excellent for the Federal Government to fulfill decades-old promises to Alaska Natives and to the State of Alaska. Thank you.

[The prepared statement of Mr. Mery follows:]

PREPARED STATEMENT OF JAMES MERY, SENIOR VICE PRESIDENT FOR LANDS AND NATURAL RESOURCES, DOYON, LIMITED, FAIRBANKS, AK

Mr. Chairman and Members of the Subcommittee, good afternoon and thank you for the opportunity to appear before you today and provide the views of Doyon, Limited on S. 1466, the Alaska Land Transfer Acceleration Act.

My name is James Mery. I am the Senior Vice President for Lands and Natural Resources at Doyon, Limited (Doyon) in Fairbanks, Alaska. Doyon is one of twelve regional corporations established under the provisions of the Alaska Native Claims Settlement Act of 1971, which is often referred to as ANCSA. Doyon represents over 14,000 members of Indian, Eskimo and Aleut descent. Pursuant to ANCSA Congress granted to Doyon the largest land entitlement of the twelve regional corporations, some 12.5 million acres spread out in numerous parcels throughout the vast interior of Alaska. I have had the honor and privilege to work for Doyon for over 20 years, and much of my time there has been directly involved with ANCSA land selections and conveyances.

I come here this afternoon to tell you that S. 1466, with certain improvements, is a much needed piece of legislation. I also want to express my thanks to Senator Murkowski, her staff and Interior Department officials here in Washington and back home in Alaska. S. 1466 is the result of hard work by them to identify problem areas, and propose solutions that would indeed accelerate land conveyances in Alaska, if the necessary funding is appropriated. Their initiative and determination is commendable. ANCSA and the Alaska Statehood Act, both subjects of the bill before you, are complex pieces of legislation. Many attempts have been made over the years to make technical amendments to fix unforeseen and changed conditions. In contrast, S. 1466 is a comprehensive approach to solve major technical and policy

issues that negatively affect the implementation and resolution of these two acts of Congress.

S. 1466 is broad in scope. Several matters addressed in the bill have no direct impact on Doyon as a Native corporation, and therefore we offer no comment. A good example is Title I, which deals with State of Alaska land selections and conveyances under the Alaska Statehood Act. In contrast, how Native allotments are addressed in Title III does impact Native corporations, the State of Alaska and the allotment applicants. This is a matter that I will address later.

One straightforward way to demonstrate the need for S. 1466 as it relates to Doyon as a Native corporation is to let you know that today, some twenty-two years since the passage of ANCSA, over two million acres of ANCSA land entitlement have yet to be conveyed to Doyon. It is probably impossible to measure what economic opportunities may have been lost or diminished because of this delay. But I am not here today to complain about the past. We are concerned about making the best of the future.

I also think it is important to note that the lack of certainty over final ANCSA land ownership patterns is not a Native only issue. In so many situations, the unresolved land conveyances and related ownership patterns of ANCSA village and regional corporations have also produced negative side effects on State and federal land managers. Until Native land conveyances are resolved, the State is unable to finalize many of its Statehood Act land selections. This is because the State has often selected some of the same lands selected by Native corporations, although the Native selections have priority. Also, ultimate federal ownership in such places as National Wildlife Refuges and National Parks remains uncertain because of incomplete ANCSA conveyances.

S. 1466 provides the framework and needed federal flexibility to resolve Native corporation and State of Alaska land conveyance matters. Subsequent to the introduction of S. 1466 last summer, I attended several meetings with federal officials and other representatives of Native corporations to discuss the bill. Through this open and collaborative process a number of needed technical improvements to Native corporation provisions in Title II, Title IV and Title VII have been addressed. It is our expectation that these changes will work their way into the current bill.

I will focus for a few moments on a few of the important pieces of S. 1466. The bill addresses the significant problem of under-selected Native corporations, those that do not have land selections sufficient to meet their ANCSA land entitlements. The bill makes available new lands and re-categorizes other ANCSA selected lands under Sections 201-203, 208 and 210 in order for the federal government to satisfy its obligations to these corporations. And as a side benefit, some small federal inholdings that are difficult to manage can be eliminated. Section 209 revokes ancient land withdrawals on BLM lands that serve no valid purpose today. Many of these withdrawals are adjacent to Native corporation lands with development potential. The inability to gain access to the adjacent withdrawn lands has proven to be an impediment to exploration of Native lands. Sections 401-403 set an aggressive calendar of events relating to the establishment of plans to set new, final ANCSA conveyance priorities. This will be a large undertaking by the BLM and Native corporations, but the timeframes can be met. The bill provides a fair back-up plan for those corporations that do not meet the deadlines.

The thorniest provisions of S. 1466 deal with the treatment of Native allotments in Title III. Because thousands of current allotment applications conflict with Native corporation and State of Alaska selections and conveyances, a path to final adjudication of applications is needed. From our perspective there are three major components that must be addressed: accelerated adjudication of existing allotment applications, reinstatement of previously closed allotment applications, and acceptance of reconstructed applications. No provisions of Title III directly address pending applications and the dire need for adjudication funding. Title VII authorizes appropriation of such funds as necessary to carry out the purposes of S. 1466. I certainly hope that at a minimum the legislative history of this bill will reflect an intention to address this aspect of needed funds. Just as there are Title VI deadlines imposed on the State of Alaska and Native corporations, there are deadlines proposed in Title III. The Title III deadlines are designed to bring finality to possible reinstated and reconstructed allotment applications. The open question here is whether or not there should ever be a closing date on these applications, given the circumstances that created this situation. At a minimum, more time is needed than is currently provided for in the bill.

In closing, I want to note that I am here today representing only Doyon, Limited. Alaska Natives, their corporations and tribes are a diverse group of people with many common interests, but they often hold differing opinions on a wide range of

topics. For that reason, I respectfully request that the record be held open for two weeks to allow submission of additional written testimony.

Thank you and I would be pleased to try to answer any questions.

Senator MURKOWSKI. Thank you, Mr. Mery.

Next let us go to Mr. Russell Heath, executive director of Southeast Alaska Conservation Council out of Juneau. Welcome.

**STATEMENT OF RUSSELL HEATH, EXECUTIVE DIRECTOR,  
SOUTHEAST ALASKA CONSERVATION COUNCIL, JUNEAU, AK**

Mr. HEATH. Thank you, Madam Chairwoman. I and SEACC appreciate the invitation to testify before the committee. The Southeast Alaska Conservation Council is a coalition of 18 conservation groups in southeast Alaska. We have member groups in 14 different communities there stretching from Ketchikan to Yakutat.

For the record—and we would like to make this very clear—SEACC supports the full and rapid conveyance of lands to both the State and the ANCSA corporations, but we have three principal concerns with this bill, concerns that I think we will share with others who do not directly benefit from it.

Our first is the threat to the public's right to comment and to be involved in decisions relating to public resources. We see this threat in the bill in sections 106 and 206 which seem to give direct decision-making powers to the Secretary of the Interior. It is not clear to us how the current public process is broken or what has happened in the last 20 or 30 years of this process to either unduly hinder or to frivolously delay land conveyances. We are not sure what needs to be fixed here.

Furthermore, we are concerned that in reducing opportunities for public involvement, it actually will risk slowing future conveyances. When residents and local communities learn that land that they have depended on for their livelihoods for hunting and fishing, for their recreation have suddenly been transferred out of public and into private ownership, they are going to be angry. They are going to be upset. And when Alaskans get angry, they get political. Witness the anger that is happening in south central Alaska right now over coal bed methane. So that is one of our concerns.

A second concern is that S. 1466 seems to arbitrarily increase the entitlement of the ANCSA corporations. Specifically, Sealaska will get approximately 28 percent more land than BLM thinks it is entitled to. And one of our concerns is that by diminishing public involvement, by increasing entitlement, you are creating a perception that this bill is providing special benefits for special interests at the expense of the public.

And our final concern is we are not certain that it is going to solve the problem. As the previous two testifiers have mentioned, one of the key problems with the speed with which land has been conveyed is the lack of resources. The more resources that BLM has means the more surveyors, the more lawyers, the more land experts they have available to put on the problem. So resource is a key issue.

Another of our concerns is that reopening ANCSA, particularly reopening it in such a way that it looks like certain interests are getting another bite at the apple by these increased entitlements, many create a political controversy in that other people who are in-

volved with ANCSA will also want that second bite of the apple. And that political controversy may in the future further delay land conveyances.

Senator, SEACC is on the ground all through southeast Alaska. We have members in each community. Our staff travel the area continually and we talk to everybody, loggers, fishermen, business people, city officials, and certainly other conservationists. One of the things that we are hearing down there is that this bill could be very controversial, perhaps as controversial as the Cape Fox land transfer in Berners Bay. I offer, just as evidence, this sheet of letters, municipal resolutions, and letters to the editor that people in the southeast have written opposing S. 1466.

Thank you.

[The prepared statement of Mr. Heath follows:]

PREPARED STATEMENT OF RUSSELL HEATH, EXECUTIVE DIRECTOR,  
SOUTHEAST ALASKA CONSERVATION COUNCIL, JUNEAU, AK

My name is Russell Heath, the Executive Director for the Southeast Alaska Conservation Council (SEACC). I would like to thank the Chairman and members of the Subcommittee for inviting us to testify. The following statement is submitted on behalf of SEACC. SEACC respectfully requests that this written statement and accompanying materials be entered into the official record of this Subcommittee hearing.

Founded in 1970, SEACC is a grassroots coalition of 18 volunteer, non-profit conservation groups made up of local citizens in 14 Southeast Alaska communities that stretch from Ketchikan to Yakutat. SEACC's individual members include commercial fishermen, Alaskan Natives, small timber operators, hunters and guides, and Alaskans from all walks of life. SEACC is dedicated to preserving the integrity of Southeast Alaska's unsurpassed natural environment while providing for balanced, sustainable uses of our region's resources.

Senator Lisa Murkowski introduced S. 1466 on July 25, 2003 and held a field hearing in Anchorage, Alaska on August 6, 2003. SEACC submitted written testimony at this field hearing. On Thursday, February 5, 2004, we received draft amendment language for S. 1466. Like the original S. 1466, several sections in the Draft Amendment raise serious concerns because they go far beyond this bill's objective of bringing closure to the land entitlement process in Alaska and raise a number of significant environmental concerns and questions. As presently written, the bill is more likely to delay land transfers further instead of expediting them as S. 1466 purports to do.

The scope and complexity of this bill is understandable because the transfer of Alaska federal lands to Alaska Natives, the State of Alaska, and Alaska Native Corporations is the largest and most complex land conveyance program in the history of the United States. We support completing the land conveyance process under the Alaska Native Claims Settlement Act (ANCSA), Alaska National Interest Lands Conservation Act (ANILCA), the Alaska Statehood Act, and the Alaska Native Allotment Act because certainty of land ownership benefits the landowners and the public alike. However, as currently drafted, S. 1466 reopens complex land entitlements previously settled by Congress, arbitrarily removes lands from Alaska's national parks, refuges, and forests, and opens millions of acres of public lands in Alaska to mining and other new uses without the benefit of land use planning and public input. We urge you not to rush this bill. Instead, please take a hard look at the wide-ranging consequences of this proposed legislation on federal lands in Alaska.

For the record, while our testimony focuses on the effect of S. 1466 on federal lands in Southeast Alaska, we share the same concerns with the bill as expressed by the Sierra Club in their testimony before you today.

WILL S. 1466 FAST TRACK THE ALASKA LAND CONVEYANCE PROCESS AT THE EXPENSE  
OF LEGITIMATE COMMUNITY CONCERNS?

As Senator Murkowski explained in her statement when she introduced S. 1466, "[t]he Alaska Land Transfer Acceleration Act of 2003 imposes very strict provisions on [the Bureau of Land Management] to complete land conveyances by 2009 to Alaska Natives, the State of Alaska and to Native Corporations." 149 Cong. Rec. S9976 (July 25, 2003).

Senate Bill 1466 seeks to accomplish this ambitious schedule by substituting the existing open and formal process for determining land entitlements with a process that leaves the public and affected communities in the dark. Section 106 authorizes the Secretary of Interior to negotiate binding, written agreements with the State of Alaska with respect to any subject that may assist in completing the conveyance of federal land to the State, including the exact number and location of acres. Section 212 similarly gives the Secretary authority to negotiate agreements with Native corporations concerning any issue that may help complete the conveyance process, including the amount and location of the corporations remaining entitlements.

We agree that it may make sense to allow for negotiations and informal agreements to help resolve some entitlement issues with the State of Alaska and Native corporations. The process set up by Sections 106 and 212, however, is unacceptable because neither section provides for public participation nor binds the Secretary's authority to restrictions that otherwise apply to State and Native selections under the Statehood Act, ANCSA, ANILCA, or other laws. One such limitation is the limitation on conveyances of lands within Conservation System Units (CSU), as defined by section 102 of ANILCA, 16 U.S.C. § 3102. See 16 U.S.C. § 3209. Additionally, S. 1466 must be amended to safeguard other critically important national interest lands protected by Congress that are not CSUs, including legislated LUD II lands protected in their natural state in perpetuity by Congress in the 1990 Tongass Timber Reform Act.

We cannot emphasize enough the importance of assuring that the land conveyance process is open to public participation. We urge the Subcommittee to assure that efforts to speed up and complete land conveyances under the Statehood Act and ANCSA do not come at the expense of legitimate community concerns about the effect of such land conveyances on traditional community uses of affected public lands. Both sections 106 and 212 should, at a minimum, provide for publication of proposed agreements in the Federal Register and a 90-day public comment period.

#### SECTION 105—THE UNIVERSITY OF ALASKA'S ENTITLEMENT

Section 105(a) and (b) of S. 1466 declares the University of Alaska's remaining land entitlement to be 456 acres as of January 1, 2003, and increases that entitlement to reflect the reconveyance of any land to the United States to accommodate conveyance of Native allotments. We understand that BLM estimates there to be approximately 1,200 acres of these reconveyed lands. Section 105(b) authorizes the State, on behalf of the University, to select any mineral interest or reversionary interest held by the United States or a nongovernmental third party located in the State that is an isolated tract and that is vacant, unappropriated and unreserved. It is unclear, however, from the limitations on selections contained in subsection 105(b)(6) whether the University may take mineral or reversionary interests within inholdings in CSUs, or other critically important national interest lands protected by Congress that are not CSUs. A prime example of these latter lands on the Tongass National Forest are the legislated LUD II lands protected in their natural state in perpetuity by Congress in the 1990 Tongass Timber Reform Act.

An earlier draft of S. 1466 required notice of the State's selections on behalf of the University of Alaska to be published in a local newspaper and subject to public comment, with those who commented entitled to notification of a final decision. We are troubled that Section 105(c) of S. 1466 no longer contains these requirements. As amended, the University could take title to "high value" lands within the Tongass and Chugach National Forests for purposes of development without giving local communities and Alaskans an opportunity to voice legitimate concerns about the effects of such conveyances on their uses of such lands. The Draft Amendment fails to respond to this important issue.

#### CONVEYANCE OF LAND ENTITLEMENTS UNDER SECTION 14(H)(8) OF ANCSA

Section 14(h) of ANCSA established a two million acre pool of lands from which several categories of entitlement were to be met, including the conveyance of cemetery sites and historical places, land entitlements for the urban Native corporations created by ANCSA, and Native allotments. According to section 14(h)(8), the remainder of lands not otherwise conveyed under this section were to be allocated and conveyed to the eligible Regional Corporations on the basis of population.

Instead of following the above process, Section 207 legislatively specifies that a Regional Corporation would receive its percentage share of 255,000 acres, regardless of the actual acreage the corporation may have been eligible to receive. No basis is provided for selecting this amount of specified acreage; it is significantly higher than the BLM's estimate two years ago of 180,000-200,000 acres remaining in the pool

of entitlement lands to be conveyed to the Regional Corporations.<sup>1</sup> The 255,000 acres specified in S. 1466 is an overly large estimate of the corporations' remaining entitlement under 14(h)(8). For example, S. 1466 would greatly increase the allocation of lands that Sealaska, the Regional Corporation for Southeast Alaska, could be conveyed from Tongass National Forest Lands. Sealaska's remaining entitlement to lands in Southeast Alaska would be 55,590 acres, significantly higher than the 39,000 to 43,000 acres estimated by BLM in 2002.

The Draft Amendment simplifies this section by dropping the alternative method provided in the earlier draft of S. 1466 that allowed for Regional Corporations to enter into good faith negotiations with the Secretary of Interior to settle its final 14(h)(8) entitlement based on the parties' estimate of the number of acres to which the corporation will be entitled. It does not, however, address our fundamental concern regarding the arbitrary increase in remaining land entitlement to be conveyed to Regional Corporations. Consequently, we strongly recommend that Section 207 be deleted.

Section 208 of the Draft Amendment allows the Secretary of Interior to withdraw additional "vacant, unappropriated and unreserved land" if a Regional Corporation does not have enough valid selections on file to fulfill its remaining entitlement from within the boundaries of lands originally withdrawn by BLM for Native corporation selections. As amended, S. 1466 would exclude all Tongass National Forest lands, except for those lands previously withdrawn under ANCSA for selection by Native village corporations. See 43 U.S.C. §§ 1615(a) and 1615(d). The amended language in section 208 is an improvement because it safeguards not only CSUs on the Tongass, but other critically important national interest lands that were protected in their natural state by Congress "in perpetuity" but are not CSUs, specifically the legislated LUD II lands in the 1990 Tongass Timber Reform Act. Safeguarding these key lands was strongly supported by Alaskans including many communities, the State of Alaska, commercial fishing groups, tourism groups, Native Alaskan organizations, and many others. See Exhibit 2. Unfortunately, this amendment fails to address our fundamental concern regarding the arbitrary increase in remaining land entitlement that Sealaska would receive on the Tongass National Forest under Section 207.

#### ALASKA LAND CLAIMS HEARINGS AND APPEALS

Section 501 of S. 1466 authorizes the Secretary of Interior to establish a hearings and appeals process for land transfer decisions issued by BLM regarding Native, Community, State, or University land selections in Alaska. Of greatest concern to SEACC, this section allows the Secretary to avoid the public process of notice and comment ordinarily applicable to agency promulgation of regulations and exempts the regulations from NEPA review. Although it is reasonable to establish an Alaska hearings unit to handle all Alaska appeals, creating an entirely new appeals process rather than providing more funds for the existing Interior Board of Land Appeals is unreasonable. The Draft Amendment language before the Subcommittee today fails to respond to this critical issue. Although funding for BLM's land conveyance program in Alaska has steadily increased the last several years, President Bush's budget for FY 05 decreases this critical funding level by \$8.9 million dollars.

#### ALASKANS FEARFUL OF THE EFFECTS OF THE PROPOSED CHANGES UNDER S. 1466

Alaskans from Kotzebue to Gustavus have written letters to Alaskan newspapers protesting the Alaska Lands Transfer Acceleration Act. Many Alaskans resent the portions of the bill which would eliminate their participation in land settlements that affect federal lands upon which they depend. "This denial of public process would be a serious setback to the progress made over the past 30 years in allowing citizens to play meaningful roles in major public land management decisions. Federal lands in Alaska are essential for subsistence, commercial and noncommercial use by all Alaskans and people need to be able to influence these decisions." See Exhibit 3 (Anchorage Daily News, Baker, Dec. 1, 2003).

Cutting the public voice out is especially unpopular because areas slated for possible selection include favorite fishing spots like the Situk River, rural hunting grounds like Sea Otter Sound, and other places with high community values. The bill "involves more parties than spring break in Fort Lauderdale and cuts the public out of land claims settlements that could include some of the most popular recreation and hunting areas." See Exhibit 4 (Anchorage Daily News, Brown, Nov. 9,

<sup>1</sup> See Letter from United States Department of Interior, Bureau of Land Management, Alaska State Office to McNeil, President and CEO of Sealaska Corporation (July 2, 2002) (attached as Exhibit 1). NOTE: The exhibits have been retained in subcommittee files.

2003). “Near my home in Tenakee Springs, valuable fishing and subsistence hunting areas as Kadashan and Trap Bays would be privatized. Juneau residents have been flocking to Tenakee for deer hunting this month. If the best deer habitat is privatized and logged, the deer hunting will suffer.” Exhibit 5 (Juneau Empire, McBeen, 12/29/03)

At their October 8, 2003 meeting in Craig, Alaska, the Southeast Alaska Federal Subsistence Regional Council passed a resolution stating that S. 1466 will substantially affect subsistence uses of Southeast Alaska’s public lands. See Exhibit 6 (relevant excerpts from hearing transcript). As one board member stated, “the concern here, subsistence wise, is that when this land is exchanged it become private land and therefore under current law it is not subject to subsistence laws and regulations. So we have been accustomed to using this land for many years. So my concern would be is there going to be any provision to allow subsistence uses by non-shareholders in these areas . . . .” *Id.* at p. 00467. He added that the Board should have had some notification of the bill and the potential affect on subsistence. “This will affect subsistence users so we want to be considered before this happened . . . .” *Id.* at p. 00472. The resolution further called on Senator Murkowski to comply with ANILCA public notice and hearing provisions to inform and educate the public about the effects of the bill on subsistence activities. The resolution sponsor clarified that “I realize that these transfers are going to take place, those provisions in ANILCA are just mainly to ensure that public input is provided in any decisions, and spells out the Regional Councils [consultation] explicitly and also public testimony. And I think we agree fully that the public should be part of this that’s all I’m asking for is that there be enough input into the process from affected people, subsistence users, allotment users all of us have an interest in this and it should not be just decided in the halls of Congress.” Exhibit 6 at p. 00472.

Other Alaskans question the effect of the proposed changes on their basic rights. “The bill (S. 1466) contains language that would terminate basic rights of Alaska Natives with pending allotments, like the right to independent judicial review, and concentrate all the power in the hands of the Bureau of Land Management and Department of Interior. This is an issue of individual rights versus governmental control.” See Exhibit 7 (Anchorage Daily News, Nordlum, August 14, 2003).

Some Alaskans equate this bill with the highly controversial Cape Fox Land Exchange (S. 1354) that proposes to privatize highly valuable lands north of Juneau. “Neither S. 1354 nor S. 1466 (Land transfer Acceleration Act) adequately address existing community uses, including recreation, subsistence, and habitat resources.” See Exhibit 8 (Juneau Empire, Grossman, Oct. 13, 2003)

ANCSA, ANILCA and the Statehood Act are immensely complicated land bills. Couched in complex legal terms, and referencing numerous sections of existing land law, S. 1466 is virtually unintelligible to any reader lacking a background in Alaskan land law. One Alaskan wrote “Senate Bill 1466 is so huge, so complicated and involves so many parties that I doubt anyone understands its full effects.” See Exhibit 9 (Anchorage Daily News, Moore, Nov. 7, 2003).

With their first-hand knowledge of the challenging issues addressed by ANCSA and other Alaska land bills, Alaskans don’t see S. 1466 as a lasting solution to outstanding land claims. “This bill, however, cannot fail to be a complete catastrophe. It is an equation with too many variables and too many unknowns for Sen. Murkowski to have a prayer of solving it correctly or in Alaska’s best interest.” See Exhibit 4. “Alaska certainly has a lot of land allotment issues to resolve, but Murkowski’s land grab has no hope of settling them.” See Exhibit 10 (Juneau Empire, Lee, Nov. 25, 2003).

The City of Tenakee Springs passed a resolution that supports finalizing outstanding land claims, but opposes S. 1466 because the bill could allow withdrawal of valuable public lands which the community depends on for small-scale logging, subsistence, commercial and sport-fishing, recreation, and tourism. See Exhibit 11 (City of Tenakee Springs, Alaska, Resolution 2004-15, Nov. 30, 2003).

When asked about potential new corporation selections near Hoonah, the town’s tribal government, the Hoonah Indian Association wrote “the target parcels involve areas that continue to be highly significant and traditionally used by the Huna People . . . these areas are recognized as highly valuable view-shed, which enhances tour and recreation experience. We cannot allow continued industrial development to impact areas that must be retained in their natural state for future generations, our customary and traditional way of life and the benefit of our local economy for the long term.” See Exhibit 12 (Letter from Dybdahl, Hoonah Indian Assoc. to Anderson, SEACC, Jan. 10, 2003).

The Edna Bay Fish and Game Advisory Committee raised concerns that privatizing land near their communities “could very well demolish a lifestyle de-



pendent on subsistence and access to nearby federal land." See Exhibit 13 (Letter from Gaither, Edna Bay Advisory Com. to Sen. Lisa Murkowski, Sept. 22, 2003).

In their preliminary response to Sealaska Corporation's recent land claims settlement and exchange proposal, the City of Craig raised several concerns regarding privatizing large amounts of land around the City. Among their concerns were assurance of "a long term ample supply of good quality timber for local sawmills and forest products remanufacturing facilities." See Exhibit 14 (Letter from Watson, Mayor of Craig to Wolfe, Sealaska Corporation, May 16, 2003). The City also flagged the need to maintain access to nearby valued hunting and fishing grounds. Though these concerns were raised relative to Sealaska Corporation's specific proposal, they demonstrate the concerns of many Alaskans to efforts to privatize public lands in Southeast. It is easy to see how such negative effects could be exacerbated because section 207 of S. 1466 arbitrarily inflates the amount of land that Sealaska and other Regional Corporations would get under ANCSA.

#### CONCLUSION

In conclusion, we respectfully request the Subcommittee to carry out a deliberate and careful scrutiny of this complex piece of legislation. We further urge the Subcommittee to assure that efforts to speed up and complete land conveyances under the Statehood Act and ANCSA do not come at the expense of legitimate concerns of local communities and residents about the effect of such land conveyances on traditional community uses of affected public lands. Without buy-in from around Alaska, this bill will only cause acrimony, confusion, controversy, and further delays in land settlements. This would destroy the common consensus we have achieved since ANCSA & ANILCA were first passed.

Thank you the opportunity to testify on this proposed legislation.

Senator MURKOWSKI. Thank you.

Let us finally go to Mr. Jack Hession, Alaska representative from the Sierra Club out of Anchorage. Welcome.

#### **STATEMENT OF JACK HESSION, ALASKA REPRESENTATIVE, SIERRA CLUB, ANCHORAGE, AK**

Mr. HESSION. Thank you, Madam Chair. My name is Jack Hession. I am the senior regional representative for the Sierra Club in Anchorage where I live. I certainly appreciate this opportunity to comment on your draft amendment to S. 1466.

I would like to emphasize that we too support the goal of the rapid conveyance of native and State land conveyances as soon as practicable.

However, we cannot support this bill as revised at this time. It would transfer land out of national conservation system units and other public lands set aside by Congress for national conservation purposes. It would increase entitlements at the expense of public lands. It would give the Secretary of the Interior unwarranted new authority, and it would reduce the public participation in public land decisions.

Let me just give you two examples of how this bill would affect the national conservation system units, by which I mean, of course, national parks, refuges, wild rivers, wilderness areas, and the land use designation II areas of the Tongass National Forest.

Here is an example of the impact on the national wildlife refuges. Those established prior to ANCSA—those were the existing ones pre-1971—would suffer acreage reductions under sections 201 and 203. This would upset a major compromise reached on ANCSA that limited the village corporation selections in these pre-ANCSA refuges to three townships or 69,000 acres. Section 201 gives the Secretary discretion to simply waive that requirement. Section 203 would allow the Secretary to convey the last whole section to a village corporation in lieu of surveying the actual acreage within that

section. The impact of these two sections acting together could result in a substantial amount of very valuable wildlife habitat passing out of public ownership.

The next section 204 poses another threat to the pre-ANCSA refuges. It would amend another key component of the ANCSA compromise I just mentioned a moment ago by giving the Secretary the discretion to convey the subsurface estate between the three surface townships except Kenai and Kodiak to the regional corporations. The reason for this prohibition, Madam Chairman, is that it was designed to protect the surface habitat of these refuges and the subsistence resources therein. This was a major compromise reached in the settlement act of 1971 and we see no reason at this time to overturn it.

Nowhere is this prohibition more important than the Arctic National Wildlife Refuge. Section 204 would give the Secretary the discretion to convey the subsurface estate to the Arctic Slope Regional Corporation. Section 213 would require the Secretary to take this action. We think that these sections could be interpreted to mean that the coastal plain under the Kaktovik Inupiat Corporation lands might be leased to oil and gas drilling and potential development. We do not want to take that chance, Madam Chair.

Let me just give you one other example with respect to major new authority. Section 209 would revoke section 17(d)(1) public interest withdrawals of ANCSA and open them to all forms of appropriation, including mineral laws, unless otherwise segregated or reserved. Then the Secretary is given the authority to classify or reclassify these lands or any other BLM lands not otherwise segregated or withdrawn and open or close these lands to any form of appropriation or use under the public land laws, including the mineral laws, in accordance with such classification.

Notice the sequence here, Madam Chair. First, the 17(d)(1) public interest withdrawals are revoked and wide open to various appropriation under the public land laws, including the mining and mineral leasing laws. Then the Secretary is given discretion to classify or not classify, as she may wish, these very same lands. This sequence does not make sense and I think poses a major threat to the integrity of the public interest withdrawals, the BLM lands of Alaska, aside from the national interest lands or the national conservation system units. That is not an appropriate way to properly manage the public lands in our view.

I chose these two examples because they will become intensely controversial and we do not think they are necessary to accomplish the purpose of this bill. There is no relation at all to the goal of expediting the conveyances to the native corporations and the State. So, therefore, it seems to me that you could delete these easily and not jeopardize or potentially jeopardize the passage of this bill.

Finally, Madam Chair, I go back to some legislation of about 4 years ago when this committee settled the allotment claims of the veterans of the Vietnam War era. As a basis for that consideration, the committee had a comprehensive report from the Department of the Interior that was extremely valuable both to the committee and to the public in understanding the issues and dealing with the legislation. Given that this bill before us today is far more complex,

lengthy, and potentially controversial, I would recommend that you ask the Department for a similar comprehensive report or perhaps the General Accounting Office for such a report before you take any further action on the bill. Given a detailed analysis of the impact of this, I think we could all eventually come to agree on a bill that would accomplish the purposes set forth. I think it would be a valuable public service.

That completes my statement. Thank you very much.

[The prepared statement of Mr. Hession follows:]

PREPARED STATEMENT OF JACK HESSION, ALASKA REPRESENTATIVE,  
SIERRA CLUB, ANCHORAGE, AK

Good afternoon, Mr. Chairman and members of the Subcommittee. Thank you for the invitation to offer our views on to S. 1466, the Alaska Land Transfer Acceleration Act. My name is Jack Hession, and I am the Senior Regional Representative of the Sierra Club in the Alaska Field Office of the Sierra Club in Anchorage, Alaska. The Sierra Club is a national environmental organization of over 700,000 members with chapters in every state.

SUMMARY

We support the transfer of remaining Native and State land selections as soon as practicable. However, we oppose S. 1466 as introduced and as revised by the proposed amendments of February 2, 2004, because it goes far beyond the changes in law, if any, that may be needed to expedite the transfer of the remaining selections.

If passed, the bill would transfer land out of national conservation system units and other public lands designated for national conservation purposes, arbitrarily increase state and Native land grants at the expense of the public lands, give the Secretary of the Interior unwarranted new discretion, and reduce the public participation in public land decisions. The bill also contains numerous provisions unrelated to the goal of speeding up the land conveyance process.

S. 1466 threatens the integrity of many national conservation system units, including the Arctic National Wildlife Refuge and other refuges established prior to ANCSA, such as Alaska Maritime, Izembek and Yukon Delta. It also puts at risk sensitive public lands in the Tongass and Chugach National Forests, and public hot springs.

S. 1466 is complex and controversial measure that proposes to amend ANCSA, ANILCA, and the Alaska Statehood Act. We recommend that the Subcommittee ask the Department of the Interior for a comprehensive report on the Department's land conveyance program as the basis for further consideration of this bill. In the course of settling certain Alaska Native veterans' allotment claims in 1998, the Committee had the benefit of a detailed background report from the Department that was also very helpful to the public.<sup>1</sup>

A report on the Department's conveyance program could assist the Subcommittee and the public in considering whether changes in the law, improvements in the administration of the program, increases in funding, or perhaps all three could achieve the desired result. If changes in existing law are shown to be needed, the report could serve as the foundation for a bill that could have the support of all affected parties.

The Subcommittee has time for an in-depth examination of the issues. While there is a need to convey the remaining state and Native land selections, there is no need to rush to judgment, especially if the result of this haste would be to further delay the conveyance process. According to the BLM, Native corporations have received title by interim conveyance or patent to 37.5 million acres or 82 percent of their 45.5-million-acre ANCSA grant. Similarly, the State has received title by tentative approval or patent to 91 million acres or 87 percent of its 104.5-million-acre Statehood grant.

Meanwhile, funding of BLM's land conveyance program has steadily increased, from \$33.9 million in FY 2000 to \$41.9 million in FY 2004. BLM's conveyance staff has increased, and the Bureau has brought in specialists from the private sector and other agencies to help expedite the remaining conveyances.

<sup>1</sup>A Report Concerning Open Season for Certain Native Alaska Veterans for Allotments, U.S. Department of the Interior, 1997.

Should the Subcommittee seek a comprehensive report on the conveyance process and possible solutions, it could in the interim lend its support to an increase in funding for the BLM's conveyance program. With more administrative and surveying capability, the BLM could step up the yearly conveyance totals significantly. These increases in staff and funding would go a long way towards reaching the goal of final conveyances.

S. 1466 WITH REVISIONS OF FEBRUARY 2, 2004

*Sec. 104. Effect of powersite reserves, powersite classifications, power projects, and hot spring withdrawals*

This section would transfer to the State certain public lands that the State has selected (under the top-filing authority of ANILCA) and that have not been available for state selection because they have long been withdrawn for power-related purposes and retention of hot springs in public ownership.

This section is not in the public interest. Even with the exemption for conservation system units (CSUs) in the proposed amendments, this section would dispose of valuable public lands and resources to the State, no questions asked, in the complete absence of information and data necessary to properly evaluate the State's request. Rather than take a leap in the dark, the Subcommittee should require from the Department an inventory, land status, and resource analysis of the top-filed power-related and thermal springs withdrawals, as part of a larger more comprehensive report, as recommended above, prior to further consideration of this bill.

Thermal springs in Alaska were originally withdrawn early in the last century because of their medical and public purposes, and they remain features of the Alaska landscape cherished by Alaskans and visitors alike. It's fair to assume that those springs in public ownership outside CSU's and other federal reserves contain scientific, recreational, wildlife habitat and aesthetic values that easily qualify them for continued retention in federal ownership. For example, Upper Selawik Hot Springs, one of the springs subject to Sec. 104, is near the boundary of the Selawik National Wildlife Refuge and Selawik Wild River. Along with Lower Selawik Hot Springs inside the refuge, it is a critically important fish and wildlife habitat component of the Selawik River and hence the Refuge.

Similarly, public land originally set aside for potential power development may contain other values and resources not adequately known or adequately recognized at the time of the original withdrawals. For example, a withdrawn tract on BLM lands may be far more valuable as part of an important salmon spawning river system than for power generation purposes. As part of its land use planning process, the BLM is required to evaluate rivers and river-lake systems on BLM lands for eligibility as potential units of the National Wild and Scenic Rivers System. Some of the existing hydropower-related withdrawals may be located on rivers and streams that would qualify for inclusion by Congress in the national system. A state takeover of these withdrawn lands via Sec. 104 could disqualify the rivers as candidates for potential addition to the rivers system.

*Sec. 106. Settlement of Remaining Entitlement*

This section would authorize the Secretary to enter into binding written agreements with the State with respect to any aspect of its remaining entitlement, including the exact number of acres remaining to be conveyed to the State. As the amount of land remaining to be conveyed is set in law, this limitless discretion given to the Secretary is unjustified, particularly without any provision for public comments on such agreements. We recommend that this section be deleted.

*Sec. 107. Effect of Federal Mining Claims*

This section would allow an owner of a federal mining claim to voluntarily relinquish title to the BLM, provided the BLM transferred title to the State. The BLM would avoid having to survey the mining claim in order to exclude it from the land conveyed to the State.

Voluntary transfers of federal claims to the State have been going on for years as part of the conveyance of state-selected lands to the State. However, under the existing procedure, the land the State acquires is charged against the State's entitlement. Sec. 107 waives this requirement in some circumstances.

Sec. 107 could potentially transfer thousands of acres to the State free of charge. According to the BLM, if all federal mining claims on state lands were converted to state claims, approximately 80,000 acres could be awarded to the State.

There is no justification for waiving the charge against the State's entitlement, especially in light of the State's exceptionally generous land grant. We recommend that the waiver be deleted.

*Sec. 108. Land Mistakenly Relinquished or Omitted*

This section would allow the State, with the concurrence of the Secretary, to select or topfile land mistakenly relinquished or erroneously omitted from a previous selection or topfiling.

In evaluating this proposal from the State, the Subcommittee needs to know what lands the State proposes to now reselect or topfile. We recommend that the Subcommittee ask the State to identify the previous selections mistakenly relinquished or erroneously omitted, including the precise location and amount of acreage involved. This data could be part of a background report on the Department's land conveyance programs and problems, as recommended above.

ANILCA closed the CSUs to new state land selections. Section 108 could be interpreted to apply to pre-ANILCA relinquished and omitted land that was subsequently incorporated into the new conservation system units. We recommend that the CSUs and other public lands designated by Congress for conservation purposes be exempt from the application of this section.

*Sec. 201. Land Available After Selection Period*

This section would allow the Secretary to waive the filing deadline for Native village corporation selections in order to allow a corporation with remaining entitlement to select federal lands not available during the original filing period. Subsection (b) would allow the Secretary to "waive the 69,120-acre limitation for land within the National Wildlife Refuge System for land conveyed pursuant to this section."

The limitation of three townships is a key component of a major compromise reached in ANCSA over village corporation selections in the pre-ANCSA refuges. Congress established that limitation in an effort to balance Native claims with the national interest in these "old" refuges. We supported the compromise then, and do so now.

We recommend that the Subcommittee either delete this section or remove the waiver of the 69,120-acre limit on conveyances within pre-1971 refuges.

*Sec. 203. Conveyance of Last Whole Section*

This section would allow the Secretary to convey the next prioritized section to a village or regional corporation, other than a corporation in Southeast Alaska, if by doing so the corporation's entitlement would be fulfilled. For example, if a village or regional corporation could complete its land grant by selecting 120 acres in the next section (one square mile or 640 acres) prioritized for selection, it would receive the entire 640 acres for a net increase in its entitlement of 520 acres. If a corporation's entitlement could be fulfilled by the conveyance of 600 acres, the net increase in its entitlement would be 40 acres.

The rationale for this proposal is that BLM could avoid the existing requirement to survey "down to the last acre" to be conveyed, convey the entire section instead, and thereby accelerate the transfer of remaining selections.

However, this proposed shortcut would come at the expense of the national interest in protecting the integrity of the national conservation system units. In the national wildlife refuge system there are 99 village corporations entirely within the refuges and 42 more outside the refuges but having land selections within them. In the case of the pre-1971 wildlife refuges, application of Sec. 203 would lift the three-township ANCSA limitation discussed above.

According to the National Park Service, there are about 30 village corporations with selections inside national park system units.

Sec. 203 thus has the potential for removing thousands of acres from the refuges and parks. These potential deletions generally consist of some of the most valuable land in the CSUs. In the national wildlife refuges, villages are usually located in areas of the most productive habitat. In the national parks the additional acreage removed by Sec. 203 would likely be lowland wildlife habitat and valuable public use areas.

It is not in the national interest to unnecessarily increase the amount of non-federal lands within the national conservation system units. Since ANILCA of 1980, federal land management agencies have acquired private inholdings, some quite small, in CSUs at a cost of millions of dollars in federal funds. Sec. 203 would undermine and largely reverse this continuing effort.

For the foregoing reasons we recommend that Sec. 203 not apply to units of the national conservation systems. We urge the Subcommittee to find other means of expediting the final conveyances to those corporations that have selections within the CSUs.

*Sec. 204. Discretionary Authority To Convey Subsurface Estate in Pre-ANCSA Refuges*

Under the authority provided by this section, the Secretary of the Interior could offer to the appropriate regional corporation the opportunity to take the subsurface estate beneath the surface estate owned by a village corporation in a pre-ANCSA national wildlife refuge, except the Kenai and Kodiak refuges. These refuges include the Arctic National Wildlife Refuge and its coastal plain, Alaska Maritime, Izembek, and Yukon Delta.

This section proposes to do away with another of the key components of the compromise reached in ANCSA over proposed Native village selections in the existing refuges. (We discussed another component, the 69,120-acre limitation, under Sec. 201, above). Congress precluded regional corporation selections of the subsurface estate because it recognized that potential development of that estate was incompatible with the national interest in protecting the surface wildlife habitat and subsistence values. This is why Congress also required the surface estate to be managed in accordance with the rules and regulations of the refuge, i.e., required that any surface development be compatible with the purposes of the refuges.

We oppose Sec. 204 and recommend that it be dropped from further consideration.

*Sec. 207. Allocation Based on Population*

This section provides that in order to complete its Sec. 14(h)(8) entitlement, a regional corporation shall receive its percentage share of an additional 255,000 acres above any acreage allocated as of January 1, 2003. However, the BLM's most recent estimate of remaining 14(h)(8) entitlement is 180,000 to 200,000 acres. How and why the figure of 255,000 acres was chosen remains a mystery.

In any event, Sec. 207 would have an adverse effect on the Tongass National Forest by increasing the amount of land conveyed to the Sealaska Corporation for clear-cut logging, mining and other development.

We recommend that this section be deleted.

*Sec. 209. Bureau of Land Management Land*

This revised section revokes the Sec. 17(d)(1) withdrawals of ANCSA and opens the lands to all forms of appropriation under the public land laws, including the mineral laws, unless otherwise segregated or withdrawn. Certain public lands set aside by certain public land orders would continue to be unavailable for conveyance to the State.

The section also authorizes the Secretary to classify or reclassify any land in Alaska administered by the BLM not otherwise segregated or withdrawn, and to open or close such lands to any form of appropriation or use under the public land laws, including the mineral laws, in accordance with such classifications.

We are strongly opposed to this wholesale opening of tens of millions of acres of public lands to mining, mineral leasing, and other uses before land use plans have been put in place. This action would render meaningless the land use planning requirements of the Federal Land Management and Policy Act (FLPMA) and would circumvent the public participation in public land use decision that goes along with land use planning. This provision is also completely irrelevant to the purpose and goals of S. 1466.

We recommend that this section be deleted.

*Sec. 212. Settlement of Remaining Entitlement*

This section would authorize the Secretary to enter into binding written agreements with Native corporations with respect to any aspect of their remaining entitlement, including the exact number of acres remaining to be conveyed to the corporation. This is a parallel provision to Section 106, and we oppose it for the reasons discussed above.

As proposed in Section 212, the Secretary's broad discretion to negotiate with Native corporations raises the specter of closed-door arrangements that could jeopardize the national conservation system units, Land Use Designation II areas in the Tongass National Forest, and other sensitive National Forest lands.

BLM Alaska explained the rationale for its proposed new authority in Sections 106 and 212 as "authority that provides negotiated resolution," including "authority for village and regional corporation, state, and federal agencies to negotiate substitution of new lands for existing claims and land exchanges related to Native and state entitlements." We oppose the grant of any new authority unless it can be shown that existing authority is insufficient to accomplish the goal of the bill. There may be a need for relatively minor adjustments to existing authority, but that case has not been made.

For example, Section 212 would give the Secretary discretion to waive the requirement for public use easements under Sec. 17(b) of ANCSA covering the eight million acres remaining to be conveyed to Native corporations. This waiver authority could accelerate the conveyances, but it would come at the expense of the public interest in retaining access to public lands. We oppose this proposal.

*Sec. 213. Conveyance to Kaktovik Inupiat Corporation and Arctic Slope Regional Corporation in the Arctic National Wildlife Refuge*

This section directs the Secretary to convey thousands of acres of surface estate to the Kaktovik Inupiat Corporation and the subsurface estate to the Arctic Slope Regional Corporation (ASRC) within the coastal plain of the Arctic National Wildlife Refuge. The section, which does not contain an explicit guarantee that oil and gas drilling and development will continue to be prohibited on these lands, is the latest attempt by drilling proponents to find a back-door way into the Arctic Refuge. Conveying more subsurface land out of the refuge can only be intended to add momentum to the ill-advised and unpopular effort to develop the coastal plain of the Arctic Refuge for oil and gas. We therefore urge the Committee to remove this section from the bill.

The coastal plain lands at issue are an integral part of the original refuge established in 1960, and therefore were covered by ANCSA's provisions precluding conveyances of subsurface estate to the Regional Corporation. Despite this, in a 1983 Agreement known as the Chandler Lake Exchange, former Interior Secretary James Watt and the Arctic Slope Regional Corporation agreed to a land exchange that allowed ASRC to acquire the subsurface estate within the refuge, subject to a prohibition on development under the terms of the Agreement and Section 1003 of ANILCA.

The General Accounting Office (GAO) found the 1983 exchange "not to be in the government's best interest," and it also recommended that negotiations on another controversial exchange be discontinued.<sup>2</sup> GAO said of the 1983 exchange, "Interior used its broad authority to avoid procedural requirements otherwise applicable to land exchanges, such as full public review, preparation of environmental impact statements, and disclosure of the fair market value of the land and interest exchanged."

In 1988, Congress passed an ANILCA amendment that prevented the Interior Department from executing further exchanges in the Arctic Refuge coastal plain without Congress's express approval. The House Committee report said the prohibition was "to permit Congress to decide the future status of the coastal plain on its merits. . . . 'Megatrades' or any other exchanges, as well as any other prospective conveyances involving lands or interests in lands within the coastal plain may only be implemented after congressional review and after securing legislative approval by an Act of Congress."<sup>3</sup>

Congress concluded that the Interior Department's exchange would pre-empt its authority to decide the fate of the Arctic Refuge, while the Department "continued to assert it had the complete and unilateral authority to trade away oil and gas rights . . . without Congressional Approval."<sup>4</sup> Sec. 213 of S. 1466 overrides the Congressional amendment (ANILCA sec. 1302(h)(2); 16 U.S.C. 3192(h)(2)) to allow poorly defined future conveyances, contrary to Congress's resolution of this conflict with the Department in 1988.

We oppose section 213 and recommend that it be deleted.

*Sec. 302. Title Recovery of Native Allotments*

This section would allow any Native corporation or the State to deed back to the United States land encompassed by an allotment claim. The Secretary would then convey the same land to the allotment applicant if the applicant agrees to accept it.

Subsection (b) would amend existing law by giving the State or a Native corporation authority to determine whether the applicant is legitimately using the land. In effect this allows the State or a Native corporation to determine whether the allotment claim is valid or not. The authority to determine validity should remain solely in the hands of the federal government. We recommend deletion of the phrase "or

<sup>2</sup>General Accounting Office. October 6, 1989. Federal Land Management: Chandler Lake Land Exchange not in the Government's best interest. RCED-90-5; General Accounting Office. September 29, 1988. Federal Land Management: Consideration of proposed Alaska land exchanges should be discontinued. RCED-88-179. p. 18-19.

<sup>3</sup>H.R. Rep. No. 100-262, Part 1 at 7-8 (1987). Cited by Baldwin, 2002, p. 7-8.

<sup>4</sup>Baldwin, Pamela. August 22, 2002. Congressional Research Service Memorandum. Arctic Slope Regional Corporation lands and interests within the Arctic National Wildlife Refuge. 9pp.

attestation of the State or Native Corporation as to the use of the land by the applicant.”

Subsection (c) would allow a Native corporation under Sec. 303 to offer substitute land to the claimant. Sec. 303 would allow the relocation of Native allotments to land “selected and irrevocably prioritized by or conveyed by interim conveyance or patent to a Native Corporation. . . .”

The problem here is that “irrevocably” prioritizing a land selection does not guarantee that the land will ultimately be conveyed to the Native Corporation. An allotment relocated to such a selection could eventually create an isolated island of private land within a national conservation system unit, after excess selections—including excess prioritized selections—drop away. To guard against this possibility, Native corporations’ relocations of allotments within CSU’s should be limited to lands actually owned by Native corporations, i.e., interim conveyed or patented land.

#### *Sec. 303. Relocation of Allotments on ANCSA Lands*

This section is discussed in connection with Sec. 302, above. Relocation of allotments within CSU’s should be limited to land interim conveyed or patented to the Native corporation.

#### *Sec. 304. Compensatory Acreage*

This section provides for compensatory acreage to the State or a Native corporation when its entitlement is reduced by actions taken as a result of Sections 301, 302, and 303 having to do with Native allotment adjustments. Subsection (c) of Sec. 304 provides the Secretary with “sole and unreviewable discretion” to make additional land available to compensate a village corporation.

It is not clear whether this discretion would extend to withdrawing federal lands within CSU’s for compensation purposes. We recommend that the Secretary’s withdrawal authority be limited to lands outside CSU’s and outside other lands designated by Congress for conservation purposes, such as Land Use Designation II areas in the Tongass National Forest.

#### *Sec. 307. Amendments to Section 41 of ANCSA*

This section would allow allotment applications by certain Native veterans of the Vietnam War Era to include land “valuable for deposits of sand or gravel” except for allotment claims within units of the national park system.

We appreciate the recognition that it is important to avoid potential sand and gravel operations on private lands within units of the national park system. It is equally important to avoid such development in other national conservation system units as well. We recommend that Sec. 307 exempt all units of the national conservation systems from application of this section.

#### *Sec. 501. Alaska Land Claims Hearings and Appeals*

This section would establish a new hearings and appeal process “to decide appeals from Alaska land transfer decisions issued by the Secretary.”

Currently, the Interior Board of Land Appeals (IBLA) hears appeals of decisions on Alaska land transfers. We question the need for a wholly new and duplicative appeals apparatus for Alaska. We also object to the exclusion of the public from the process of developing regulations governing the new appeals process. In lieu of Sec. 501, the Subcommittee could lend its support for additional IBLA administrative law judges and staff adequate to expedite the resolution of pending and future appeals. We recommend that it do so.

### CONCLUSIONS

We agree that the remaining Native and state land selections should be conveyed as soon as practicable. Completion of the land transfer process is obviously in the Native and State interest; it would also benefit the public. Millions of dollars in federal funds now devoted to the conveyance program could be used for other vital public land management functions, and lands now tied up in over-selections could be managed in accordance with the land use plans of the federal agencies.

We recommend that the Subcommittee seek a comprehensive report on the status of the conveyance program, its bottlenecks and other problems, and what administrative and statutory changes would help expedite the remaining land transfers.

S. 1466 as revised adopts short cuts in existing procedures and changes in existing laws that could result in controversy, potential litigation, and further delays in the conveyance program. Many sections of the bill have the potential to harm the national conservation system units of ANILCA. Other sections would reduce public review and participation in public land decisions. Still others would grant unneces-



sary new administrative discretion to the Secretary. We urge the Subcommittee to avoid these potential pitfalls as it drafts a final version of this bill.

We stand ready to cooperate with the Subcommittee in an effort to craft a bill all interested parties can support.

Thank for this opportunity to present our views.

Senator MURKOWSKI. Thank you. Thank you all for your testimony. Thank you for joining us.

I do have quite a lengthy series of questions that I have for each of you. In the interest of time, I am just going to ask a few and you will be receiving the rest of our questions in written format, and we will look forward to your responses.

Obviously, a disagreement on both ends of the table here in terms of whether or not the State gets any additional land entitlements out of this bill. I believe it was you, Ms. Rutherford, that stated very clearly—and I think you enunciated your words—that in fact, the State does not get any additional land entitlement out of the bill. It was suggested that through this legislation, we would be essentially arbitrarily increasing the entitlement were I believe the words that Mr. Heath used.

Can you clarify for me, does the State get any additional land entitlement out of this legislation? And, Mr. Bisson, if you want to join Ms. Rutherford, that would certainly be appropriate.

Ms. RUTHERFORD. Madam Chairman, the State of Alaska does not get any additional entitlement. First of all, our entitlement was fixed at 35 years after Statehood, which was January 2, 1994. So this does not provide any additional acreage.

There is the potential for some additional acreage associated with Federal mining claims. If existing Federal mining claims were terminated or abandoned at some point in time, the land would convey to the State, and this bill does provide that the Bureau of Land Management does not have to survey out the donut holes. But that is the top end. That is the highest it could possibly be. We think 50,000. And the odds are that that would actually be a much smaller acreage figure. And that is simply because it would eliminate the very costly process of surveying out the donut holes as a responsibility by the Bureau of Land Management.

Senator MURKOWSKI. So what you have said is at the top end, there could potentially be an additional 50,000 acres that would not be subject to survey.

Ms. RUTHERFORD. That would not be subject to survey and would not be then an acreage calculation against our entitlement. That is correct, but that is the top end estimate.

Senator MURKOWSKI. Mr. Bisson, can you speak to that?

Mr. BISSON. Yes, I can. Senator, this has to do with the inefficiency of spending from \$2,000 to \$13,000 to survey each small, isolated mining claim within a large block of State-selected land. After the legislation is passed, I think what it will do is allow us to pass title without surveying these mining claims and create an opportunity that if at some point a Federal mining claimant forgets to file their paperwork or the claim becomes null and void, the land would go to the State. So it creates a small opportunity for some additional lands to go. If all of the mining claims that are currently in the areas that the State would get were to go that way—and they will not, but if they were—the entitlement amounts to eight-

tenths of 1 percent of the entire land transfer package. It is a very small amount of land, but it saves us an awful lot of money.

Senator MURKOWSKI. Then how do you respond to the suggestion from Mr. Heath that Sealaska would potentially be able to receive additional entitlement from the State and somehow be—these will be my words, Mr. Heath—unjustly enriched or the door will be open for them and not for others?

Mr. BISSON. There is a remaining entitlement in the 14(h)(8) category of ANCSA that needs to be calculated at some point when all of the remaining lands are transferred. What this provision would do is set a cap—which is what I think we have come to agreement on. We estimate that is what will be necessary to close out this entitlement.

Sealaska will be entitled to 22 percent of that cap. The other corporations—I think there is a total of 10 corporations—will be able to obtain land through this entitlement as well. We do not see it as an increase in entitlement. It is a way for us to bring this particular category to closure, and Sealaska will get its fair share and no more.

Senator MURKOWSKI. This is following up on the additional land entitlement then. Does the bill enable the State to receive any additional lands within Federal conservation system units?

Ms. RUTHERFORD. Madam Chairman, the State does not receive any additional conveyance within any of the Federal CSU's.

Senator MURKOWSKI. Are there any existing valid selections in CSU's?

Ms. RUTHERFORD. Madam Chairman, there are but just a very few. I am only aware of two selections within the national wildlife refuges and a few within the national parks. In each case the park or the refuge was established after the State selected the land, and again, the validity of those selections is not affected by this legislation nor is any entitlement expanded.

Senator MURKOWSKI. Another concern that was raised both by Mr. Hession and Mr. Heath was that somehow or other we are diminishing the public input or the opportunity to comment. We did have some discussion about this earlier with Director Clarke, but in terms of the opportunity for an individual to participate, to object, does this legislation reduce in any way that opportunity to participate?

Mr. BISSON. I think the provision that they have spoken about that they are most concerned with is section 209 which is the provision that would remove the D(1) withdrawals and permit the lands to be able to be used for multiple-use management purposes. I think that is the one they are most concerned about. Frankly, that provision is necessary.

All we are trying to do—and we have been working with committee staff and will continue to do so on this—is to expedite the process of being able to manage those lands like we would any public lands in the United States. If we have to go through a very long, time-consuming process to get there, those lands will not be available for us to provide opportunities for various uses. So in that respect, that legislation would automatically remove those withdrawals.

But the Secretary still has the ability through our land use planning process to propose to withdraw lands that are sensitive and that should not be developed for purposes that might be inappropriate for the values that are there. We have other processes in place for public involvement on all the decisions that we make on public lands. So we fully expect the public would be engaged in any future decisions that we make on those lands.

Senator MURKOWSKI. It is your observation then that section 209 is necessary in order for full implementation of this legislation.

Mr. BISSON. Yes.

Senator MURKOWSKI. Just a quick question to you, Ms. Rutherford, about the native allotments. Mr. Thomas in his written testimony did speak to this and has indicated that the State has protested many of the native allotments. I would like you to address the reason why and essentially what the State's role in dealing with the native allotments is and how the State can basically make the process work better.

Ms. RUTHERFORD. Madam Chairman, the State's role in dealing with native allotments is primarily one of reconveyance. A few hundred of the allotments are on State land that had already been conveyed to the State of Alaska by the Bureau of Land Management. When BLM determines that a valid native allotment exists, we review the allotment and unless there is an important public reason why it cannot accommodate the allottee, we reconvey the land back to the Bureau of Land Management for conveyance to the allottee.

We feel very strongly these allottees are our citizens, and we make every effort to ensure that they receive what they are entitled to. However, there have been instances where there is an overriding public interest, public reason why we have opposed certain reconveyances. So there are instances where we have not accommodated, but we try to make that extremely rare and in most instances we, working with the Federal Government, are able to either find substitute lands or actually reconvey the land back to BLM for conveyance to the allottee.

Senator MURKOWSKI. Mr. Thomas, in your written testimony and in your spoken comments, you alluded to certain changes and you go into more detail in your testimony. I think that I heard you say that without these changes, you did not think that we would be able to keep the goal that we have set of completing the conveyances by the year 2009. In looking through them, it looks like there are a lot of changes, and I guess I want to understand if you feel that given the changes that you are suggesting, whether we can still meet our goal.

Mr. THOMAS. It is our collective judgment, yes. Now, having said that, there are some things that even we are proposing that will add time. For example, with the appeals process, there is some time that would be added to the process.

I think that the other, I guess, caveat here—you heard from the State where their objections are and we agree with those. Now, it is the other blanket objections, that when you have 6,000 objections and very many of them are pretty much the same reasons, I think that those can be handled somewhat as a class and not have to be dealt with each step along the way because when you have a protest, there is a process by which to deal with that protest which

is very involved and requires a lot of proof on one side or the other. So we have got to get past that because it is holding up everybody. It is bogging down the system from our perspective.

On those isolated cases that were spoke of, we have no problem with that. We are still working through many of those things where there are overlapping claims or filings. She is right. We do work out those pretty well. It is just that backlog is really creating a big problem for everybody, and we feel that some of them are really just there to be there.

Senator MURKOWSKI. One of the suggestions that you have proposed is actually contracting out some of the allotment workload to natives.

Mr. THOMAS. Right.

Senator MURKOWSKI. I do not know what the rest of the panel might think about that as a proposal, but I would imagine that there are many of your friends and neighbors that probably have more working knowledge about what is going on within the allotment process than most other folks would ever even dream of just because they have been living, they have been waiting generations to get their allotments through. So they probably have a pretty good knowledge of what is going on, maybe not quite how to fix the problem.

Mr. THOMAS. Yes, you are right. I think to move things through the system, there is some value to that suggestion, but I must make it ultimately clear that we do not have the authority to sign off on a final certification, and I do not want to confuse the issue by suggesting that. We understand that totally. But right now there are so many issues just not going through the system and there is really no consequence for not going through the system. I am not sure you can legislate some of that stuff.

I think sometimes there needs to be a will to find the way. As I pointed out in the pipeline situation, there was definitely a will and they got it done. In our case there seems to be a dragging of feet that I am not able to put my finger on. I wish I could. Maybe more than just one finger.

I really think that there is a lot to what you said in your opening comments. Why do we need legislation to do what you are supposed to do? There are some things that can be cleaned up by this legislation, we agree, and they are adequately addressed. We make some minor adjustments, but there really needs to be some discussion about getting the job done and doing it right.

Senator MURKOWSKI. This goes to Mr. Heath's comment too, or maybe it was Mr. Hession, about what actually needs to be fixed. Where do we make that fix?

Mr. THOMAS. Yes. We provided a lot of detail in here, and hence the thickness of our testimony, and hope that there will be some credibility given to that because we understand that there is a goal way up here, but we feel that there need to be little steps along the way to get there, not just here one day, 5 years later up here. You really have to pick away at the detail and find out where the problem is, and some of these amendments I believe address them.

Senator MURKOWSKI. Mr. Mery, one quick question for you. You have mentioned the amendments and your appreciation of how far we have come since the bill was first introduced and just kind of

the ongoing work in progress. In terms of meeting our 2009 goal, what do you perceive to be the critical impediments to reaching that?

Mr. MERY. Funding for the Bureau of Land Management I think. There will be a lot of challenges within the native community to come up with their own funding, obviously, to do parallel planning I guess with them. But I think funding is really going to be the major challenge.

Senator MURKOWSKI. And if we fail to either come up with the funding or if we fail in achieving our goal, what does it mean to your corporation? What does it mean to Doyon, Limited?

Mr. MERY. I guess that is a difficult question to answer because we always try to find creative ways to work our way around problems. We have done that for 20 some odd years now. But I guess the fact that it has been so many years. A lot of people would like to wrap this process up frankly so people will know what lands they will be managing and what lands that they can potentially develop. That is the big question for us right now. We are prepared to move forward. 10 years actually we were not prepared to move forward, but we are today.

Senator MURKOWSKI. Certainty is necessary for any kind of investment.

Mr. Heath and Mr. Hession as well, either one of you can answer this because you both made the same comment in your initial statements. You state that you support the transfer of the remaining selections as soon as practicable but then you go on to object to this particular legislation and the amendments that we have proposed. Is there anything in this legislation that you do support, that you do feel helps with our agreed goal that we need to speed up the conveyance process, that we need to achieve the goal of full and rapid conveyance?

Mr. HESSION. Yes, Madam Chair. There are numerous sections. I think you can assume that if I did not mention them, that those are ones that we see as noncontroversial and helpful in this process.

Senator MURKOWSKI. Oh, good. Then I am going to go back through your testimony.

[Laughter.]

Mr. HESSION. Could I make another observation at this point? There have been a number of acreage figures talked about here this afternoon. We do not see the situation quite like some of the previous speakers. According to the BLM now as of September of last year, the BLM has transferred 91 million acres to the State of Alaska either as patented lands or interim conveyance. Interim conveyance involves complete divestiture of Federal interests to the State. For purposes of managing it, leasing it, selling it, et cetera, it is as good as patent. That leaves the State with only about 10 million acres because they want to hold on to about 3.5 million acres of over-selections indefinitely. I do not think that the sense of urgency that the State has expressed here is quite as urgent as you might be led to believe.

In the case of the native regional corporations, they only have 8 million acres left to go, and there is the real problem, if there is

any. They have 82 percent of their entitlement in hand and can do whatever they want with it right now.

That is why I suggested that maybe if the committee stepped back and took a detailed look at the bill, it could craft a version that all parties to the discussion here could support. I appreciate your effort to continue the cooperative process here. We certainly would be delighted to help out on that score. It is just that some of these are so complex, technical, and frankly, mysterious that they need further analysis we think before a final bill is adopted.

Mr. Mery has put his finger—and Mr. Thomas—on the real bottleneck here and that is the Alaska Native allotments. Once those are handled in some way, everything else will fall in place rapidly I think. Therefore, it would seem appropriate for the subcommittee to focus in on that true bottleneck, see what you can do, without abridging anyone's rights in this process, to expedite those, and then things will, I think, proceed rapidly.

Senator MURKOWSKI. Mr. Heath, what do you find of value in the bill?

Mr. HEATH. Well, I would agree with my colleague, Mr. Hession, here, that the sections that we did not comment on are sections that we find okay, we have no objection to.

If I could respond to your question to Marty Rutherford about acreages. I am looking here on our exhibit 1 in my written testimony, a letter written by BLM which states that we believe the ultimate range of acres available for reallocation is between 180,000 and 200,000 acres. And here in section, I believe, 209 of the bill, that allocation has been moved up to 255,000. That is what I was referring to in my testimony, that we have gone from the BLM maximum of 200,000 acres to the bill being 255,000 acres. And that is where we made the statement that it seems to be arbitrary. At least we do not know the justification for exceeding the BLM estimate.

Senator MURKOWSKI. You made the reference that if Kaktovik were to receive its remaining 200,000-acre entitlement, that that could be construed as allowing Kaktovik within the ANWR coastal plain, that it would somehow be construed that they would be able to proceed with oil and gas development and that we should not be willing to take that chance. We have asked this question so many different ways and the answer always comes back the same, that this in no way allows for authorization or somehow or other any opportunity for Kaktovik to pursue oil and gas development. What leads you to make the statement that you have made this afternoon?

Mr. HEATH. Madam Chair, SEACC is southeast Alaska. I believe Jack Hession made that statement. I will pass it over to him.

Senator MURKOWSKI. Okay, I am sorry.

Mr. HESSION. What I was referring to there is in the case of the KIC corporation, they would have another I think it was 6,000 acres left to go. That is not the real issue here. That is a different matter entirely from the subsection in the bill here that would require—section 213 I believe it was—the Secretary of the Interior to convey the subsurface estate to the Arctic Slope Regional Corporation. There is no guarantee that this maintains the status quo with respect to the current congressional prohibition on both convey-

ances and development of the coastal plain. It needs further analysis. It raises all sorts of questions as to the intent here, and as I mentioned before, it is going to be extraordinarily controversial and it is, furthermore, simply not relevant to the purpose of the bill.

Senator MURKOWSKI. Well, you yourself have indicated that we, in fact, we have a congressional prohibition at this point in time on oil and gas exploration and drilling in the 1002 area. So to suggest that I think this legislation opens the door for that, of course it makes it controversial, but when you have a congressional ban in place currently and unless we in Congress act to remove that, I think when you say it is controversial, yes, it is controversial because you are making it so. You are suggesting that somehow or other if we were to authorize this and enact this into law, that all of a sudden ANWR is now open. And I think we need to be careful about what we suggest the outcome of this legislation might present because I think it has been very clear, and it is not our intent with this legislation that this is somehow a back door to opening ANWR to oil and gas exploration and drilling. What we are doing here and the intent is very clear. We want to convey those final entitlements to the residents of Kaktovik as they are entitled to receive.

So there are perhaps some concerns that have been generated about this legislation that I feel are not merited based on what we have in draft, the intent of the legislation, and I think it is important that we make sure that we do not unnecessarily raise an issue that simply should not be there.

Mr. BISSON. Senator, could I say something for just a second?

Senator MURKOWSKI. Mr. Bisson.

Mr. BISSON. The Arctic Slope Regional Corporation already owns 86,000 acres of mineral estate in the 1002 area of ANWR. They already own the mineral estate under the lands that the Village of Kaktovik has. All you are doing is adding 2,000 additional acres to that ownership, which they are currently not able to explore, lease, or develop. So your point is correct.

Senator MURKOWSKI. We are fast upon the 5 o'clock hour. I appreciate the time and the attention. Thank you for coming, all of you, a long way. The subcommittee is going to be working on this to see if we cannot resolve those conflicts that might exist. We are going to be working on all four pieces. We have been focusing for the past hour really on the two Alaska bills, but we will be working on all four of them.

We will hold the committee record open for 10 business days for any additional information that may need to be put in the files in relation to these three pieces. So we would welcome any follow-up from any of the panelists on this.

With that, we will adjourn and thank you.

[Whereupon, at 4:58 p.m., the hearing was adjourned.]





APPENDIX  
ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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*Crook County, OR, February 11, 2004.*

Hon. LARRY CRAIG,  
*Chair, Senate Committee on Energy and Natural Resources, Subcommittee on Forests and Public Land Management, Dirksen Building, Washington, DC.*

Re: Testimony regarding S. 1910, to be considered Feb. 12, 2004.

DEAR MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE: On behalf of the people of Crook County, Oregon, I write today to commend you and the President for the leadership you have shown in recognizing the grave threat which the fuel-loaded forests of the western United States pose to human life and safety, public and private property and important scenic and environmental resources. Your bipartisan effort to advocate for and pass the Healthy Forests Restoration Act—the most significant legislation passed in this arena for 25 years—is an act of leadership and statesmanship which will have consequences for decades to come.

As chief elected official for a county of nearly 3,000 square miles located in the heart of Oregon and surrounded by the sprawling national forests, I and my constituents have experienced first-hand the devastating effects of economic distress brought about by near-total elimination of our traditional economic based and resulting catastrophic wildfire, insect infestation and diseases. My constituents find it unconscionable the willingness of some to allow once magnificent forests of Ponderosa Pine to fall into ruin and decay, while we continue to experience a jobless rate which is among the highest in our state which ranks second overall in the nation in unemployment. It is also heart-wrenching for my constituents to travel through forests where many have recreated since childhood and encounter large stands of beetle-killed timber or scorched earth where mighty trees once stood. We join all Americans in enjoying the benefits of ancient forests, wildlife and clean water, and we are shocked that federal forest management policies as presently administered work to the detriment of these goals.

We believe that the Health Forest Restoration Act is a necessary and proper first step toward correcting decades of mismanagement and we look forward to its implementation.

In its original form—the form substantially passed by the Senate—this legislation envisioned as a key piece a coordinating center which was intended to inventory forest health and coordinate recovery and management issues. That center was to be located in Prineville, Oregon, the county seat of Crook County, where it was envisioned that it would be attached to the Ochoco National Forest Headquarters. This component of the bill was strongly supported by Crook County but was dropped for good and sufficient reason when it was recognized by Congress that the bill, as passed by the Senate, was so laden with amendments that it was a budget buster. The ensuring decision to drop all miscellaneous provisions in order to pass the core legislation was a wise one for which negotiators are to be commended.

Notwithstanding that necessary political step, however, we believe that one proposal dropped from the original legislation was highly germane to its purposed and that its reconstitution in legislation would greatly strengthen and enhance the original bill. That provision is the establishment of a Forest Research Center, now proposed in stand-alone legislation pending before the subcommittee, S. 1910.

A companion measure, H.R. 3566, has been introduced in the House of Representatives by Rep. Greg Walden, who as author and principal sponsor of the Health Forest Initiative also recognizes the need for coordination in undoing the serious damage which has been done to our nation's natural resources. The bi-partisan, cross-Chamber support this legislation enjoys is testimony to the importance of this proposal.

As chief-elected official for a nearly 3,000-square-mile county, nearly half of which is comprised of public lands, I have a high level of interest in seeing this bill succeed. For several summers now, extreme wildfires, including Hash Rock and Bandit Springs, have burned through the forest northeast of Prineville. The consequences to ecosystems were devastating and the forests are not expected to recover fully for at least a decade. Due to appeals, even the merchantable timber in these burned-over areas will not be harvested. (In one case, litigation was filed over a mere 55 trees.) The consequence of this is that the fires have had no positive impacts, environmentally or economically, for the community of Prineville—once a vibrant and thriving center of the American wood products industry.

The result has been widespread suspicion that the federal government does not really have the best interests of the people of Central Oregon at heart. Under both Republican and Democratic leadership, we have seen our environment degraded and our traditional natural-resources based economy reduced to a mere ghost of its formerly vibrant self. Although we appreciate the federal support that has been provided through the Secure Rural Schools and Community Self Determination Act sponsored by Senators Wyden and Craig, it is quite frankly embarrassing to have to ask for and accept federal help when we have the means to help ourselves rotting in our forests just a few miles away.

The proposed forest research center can help right the balance. Not only will it ensure efficient and effective coordination and allocation of scarce federal resources (apparently growing scarcer by the day) but it will also bring much-needed federal employment opportunities to a community which has been economically damaged by federal forest-management policy of the last 25 years. In addition, by attaching the center to the Ochoco National Forest in Prineville, Congress can help assure the existence of critical mass needed to preserve the Ochoco, the resources of which have shrunk substantially in the face of stalemate and standoff related to lack of national consensus on timber harvest.

In addition, the Ochoco is a logical forest in which to attach this center because it has long been noted for its expertise in fire and fuels management. Through a collaborative effort with the BLM and Oregon State Forestry (which also maintain headquarters in Prineville) the Ochoco oversees treatment of 35,000 acres per year of forest and range fuels. In addition, the Ochoco also does fire and fuels management planning for the Deschutes National Forest, headquartered in nearby Bend, Oregon. In total, the lands for which the Ochoco is responsible, including those controlled by the Ochoco, the Deschutes and the Bureau of Land Management total more than 4 millions acres scattered across a 12 million acre area. Experience with such a vast amount of land and varied ecosystems—including coniferous forest particularly prone to fuels build up and catastrophic wildfire—would be hard to duplicate elsewhere in the nation, making the Ochoco a logical entity to which to attach the proposed center. Finally, the Ochoco makes sense as the headquarters of a forest research center because of its pioneering work using technology—particularly GIS systems and remote-sensing—to conduct large-scale inventory and forest-health monitoring projects.

In sum, simply by supporting S. 1910, you can accomplish numerous objectives:

- You can contribute to the economic restoration of a community which has been financially damaged by a federal land-management policy which has been at best confused and at worst chaotic;
- You can ensure the sustainable health of northwest forests, an important environmental asset to clean water, clean air, preservation of wildlife and recreation for all Americans;
- You can ensure the optimal investment of federal resources already committed to forest management through passage of the Healthy Forest Restoration Act; and
- You can build on an existing infrastructure well positioned to serve the natural resource management needs of the nation.

In my view, this is one of those rare “win-win” opportunities for the federal government and the constituency it serves, locally, regionally and nationally. I hope you will not let this opportunity go by and I urge you to support passage of S. 1910.

Sincerely,

SCOTT R. COOPER,  
*Crook County Judge.*

PRINEVILLE-CROOK COUNTY CHAMBER OF COMMERCE,  
*Prineville, OR, February 11, 2004.*

Hon. RON WYDEN,  
*Hart Office Building, Washington DC.*

DEAR SENATOR WYDEN: I am submitting this testimony on behalf of the Prineville-Crook County Chamber of Commerce in support of passing the Senate wildfire legislation that will establish a forest health research center at the Ochoco National Forest headquarters, in Crook County, Oregon.

Crook County is a historically timber based economy with deep ties to the Ochoco Forest. It is a logical site for a research center that would be responsible for evaluating forest health conditions, consider the ecological impacts of insect, disease, invasive species, and assess fire and weather-related events that would help reduce fire risk not only to Central Oregon but also to the Northwest forest area.

Why site the Research Center in the Ochoco National Forest? For more than a decade, Crook County has weathered the closure of primary mills due to federal forest practices and the appeals process. As a result, our community has suffered double-digit unemployment from time to time, during the last decade as a result of those mill closures.

In addition, two years ago, in a time of reduced federal budgets, our community successfully made a strong case to prevent our forest from becoming merged with the neighboring Deschutes National Forest, and we also retained our own Forest Supervisor. We proved that we could not and would not lose control of our forest that supported 50 jobs. We proved that we valued the community leadership and social capital that forest service employees provide our community. And we stood firm that the Ochoco Forest was qualitatively used differently from the Deschutes National Forest and should be managed to reflect those differences.

I point to these examples simply to demonstrate that the leadership in Crook County understands and values the economic and socio-cultural importance of the national forest to our community. It is with pride that I can also say, without hesitation, that the research center would be embraced and be supported by the community at large and by the business community. As you know, this type of community support is a critical factor in the success of a federal project.

The research center would be a boost to Crook County's economy. Research centers generally demand an effective, educated workforce. The center would blend our roots with research and provide the diversification our economy has so desperately needed. These local research-based jobs are also models for our students in our high schools, encouraging them to pursue higher education.

I also want to take this opportunity to acknowledge the unflagging support our community has received from Senator Wyden and from Rep. Greg Walden. Both Senator Wyden and Representative Walden understand the need for the research center, and also understand that placing the research center in Prineville would be a judicious decision.

While they understand our economic need, they have always acknowledged our strengths: our skilled workforce, our strong work ethic, our affordable housing, our high quality of life and the fact that we have an established, cooperative relationship between the Forest Service, Bureau of Land Management, County and City Government and members of the timber sector of the business community. We have a strong framework in place in our community in which to launch a successful research center. We thank Senator Wyden and Rep. Walden for their leadership.

We respectfully ask for your consideration. Specifically, we ask that you site and fund the Forest Research Center at the Ochoco National Forest in Prineville, Crook County, Oregon.

Sincerely,

DIANE BOHLE, PH.D.,  
*Executive Director.*

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NATIONAL MINING ASSOCIATION,  
*Washington, DC, February 12, 2004.*

Hon. LARRY CRAIG,  
*Chairman, Subcommittee on Public Lands and Forests, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The National Mining Association (NMA) would like to express its strong support for S. 1466, the Alaska Lands Transfer Act of 2003, sponsored by Senator Lisa Murkowski, with the amendments to the original version pro-

posed on February 2, 2004. We ask that this letter be placed in the record of the hearing on this legislation scheduled in your subcommittee for February 12, 2004.

NMA's membership of over 300 companies represents all mining industry segments including hardrock minerals and coal operators as well as equipment manufacturers and services providers. NMA is proud to represent a dynamic industry that is employing the latest technologies to produce the minerals, metals and energy that the United States needs for economic growth, national security, enhanced competitiveness and a rising standard of living for all Americans. The NMA membership includes companies making a significant contribution to the economy of Alaska.

Mr. Steven C. Borell, Executive Director of the Alaska Miners Association, testified on this legislation at the subcommittee's field hearing in Alaska on August 6, 2003. NMA agrees with the Alaska Miners Association that Senator Murkowski's bill would streamline a number of land status issues which directly affect the State of Alaska's ability to obtain title to 104 million acres of Alaskan land for multiple uses, including mining of critically important minerals and metals.

As proposed to be amended, S. 1466 removes public land orders associated with lingering withdrawals, the purposes of which have been fulfilled and thus the orders are no longer needed to be in force. The bill addresses these presently withdrawn lands without additional NEPA review and does so without impacting the existing authority of federal agencies such as the Bureau of Land Management to withdraw lands which are now opened. In addition, the bill provides proper priority to Native Americans, including village and regional corporations, during the land status review process.

We commend Senator Murkowski for pursuing this legislation and for taking into account our views and those of the Alaska Miners Association as the bill is being refined. We believe her effort will help the U.S. to remain internationally competitive by lessening the uncertainty over land use restrictions in Alaska and it will serve to facilitate more exploration, investment and job opportunities in Alaska.

Sincerely,

JACK N. GERARD,  
*President and CEO.*

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